

A WTO-GATS-TOURISM



IMPACT ASSESSMENT FRAMEWORK

for

Developing Countries



A WTO-GATS-Tourism Impact Assessment Framework for Developing Countries

Church Development Service-
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(EED)

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The cover page depicts a section of a beach in Bekal, India, cordoned off by a luxury hotel for private use.

August 2005

EQUATIONS, India

EQUATIONS was founded in 1985, in response to an urge to understand the impacts of tourism development in the context of liberalised trade regimes, the opening up of the national economy and initiation of economic reforms. We envision tourism that is non-exploitative, where decision-making is democratised and access to and benefits of tourism are equitably distributed.



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Why should Tourism be taken seriously?

According to the World Travel and Tourism Council, the combined direct and indirect contribution of the travel & tourism economy is expected to total 10.6% of world gross domestic product (GDP) in 2005, which will be a staggering figure of around USD 4.5 trillion. The global travel & tourism industry is expected to produce 2.1 million direct new jobs in 2005 over its 2004 level to total 74.2 million jobs or 2.8% of total world employment. Accounting for another 2.1 million jobs that will be created in the sectors indirectly associated with the travel and tourism industry a total of 221.6 million jobs dependent on Travel & Tourism or 8.3% of total employment will be created by the end of 2005.

Tourism sector can make or break economies. In countries such as Vanuatu, Maldives, Bahamas, Barbados, San Marino and Andorra this sector contributes more than 50% to the GDP. On the other hand, tourism receipts become insignificant for some. Examples are Bangladesh, India, Burundi, Cameroon, Haiti and Suriname wherein, tourism contributes less than 5% of their GDP. Interestingly, a trend that became clearly visible in the decade of the nineties and which continues to manifest itself till date is:

- Tourism exports has emerged as a primary foreign exchange earner in 49 least developed countries (LDCs)
- Tourism is now a principal export earner for 83% of developing countries and the principal export earner for one third of them.
- More than 20% of the populations in around 20 of the 49 LDCs are engaged directly into tourism activities.

Local communities, economies and Tourism

What attracts tourists to these destinations? Least developed and a host of developing countries attract tourists due to their rich heritage, biodiversity and ecology and traditional knowledge. Countries such as India and Sri Lanka are fast emerging as leaders in 'health-tourism', wherein traditional scientific therapies are being used to sooth "soul and bodies" of tourists.

Intensifying tourist-value of these ecologically diverse and heritage tourist destinations within developing and least developed countries has spun a web of economic gains for their respective governments, large hotel-chains and service providers with international presence.

Have these economic gains been shared with local communities who have been historical guardians of these ecological and heritage sites? In many cases, one finds local and indigenous communities, have either been forcibly disenfranchised of their legitimate economic and social right over these spaces or have been paid menial compensations that have in a way commodified the cultural importance of these spaces in the livelihood of these communities.

It is not only local societies that are experiencing stress but local economies are also under pressure. The latter's support systems, viz. small local manufacturing enterprises are finding it increasingly difficult to sustain their identity and financial viability - thanks to policies that are being pushed by larger, vertically integrated and mightier tourism-business entities compelling the Davids' to fight with Goliaths on a unequal terrain. In many cases, the State and its agencies willingly collaborate with large business, as such collaboration lends a political opportunity to the State for showcasing its "incredible" past to hide its tumultuous present.

GATS, Tourism expansion and critical questions

As activists we should then ask ourselves whether the commitments that our respective governments are making on tourism services under the General Agreement on Trade in Services (GATS) are arresting proliferation of such a phenomenon and promoting sustainable tourism (as envisaged under Convention on Biological Diversity, Commission on Sustainable Development) by:

- Addressing the social, ecological and cultural concerns of communities and indigenous people directly impacted by pressures of tourism;
- Allowing communities and people un-hindered access to natural resources which they have protected for centuries;

- Maintaining the identity and financial viability of local business ventures that support livelihoods in the region.

Evolving a analytical framework

The issues raised in the bullets above provide an effective and participatory framework for us to analyze the impact unfolding negotiations on tourism services will have on constituencies and groups with whom we work on the ground.

This publication goes beyond provision of such a framework. By using the internationally accepted sustainable tourism principles as a normative framework, it points out how unfolding negotiations on tourism services under GATS will impact people and policies along economic, environmental, social and institutional axes in countries/regions such as Fiji, East Africa, Brazil & Mexico and India. :

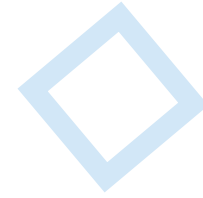
- (a) Economic axis – The analysis under this axis has examined:
 - Whether growth of tourism in the Fijian economy has linked itself effectively with improving the prosperity of Fijian local communities;
 - The role of small and medium enterprises in tourism expansion of Fiji.
 - If encalvization has resulted from implementation of Tourism Development Plans;
 - The impact of tourism industry on quality and magnitude of employment generation;
- (b) Environmental axis – The analysis under this axis has studied:
 - The impact of tourism expansion on biological diversity in countries such as Kenya, Tanzania and Uganda in East Africa;
 - How certain commitments under various modes can accentuate depletion of natural resources and further reduce access of people to natural resources;
 - The relationship between GATS commitments and policy/legislative instruments to regulate pollution and waste generation in Kenya;
- (c) Social axis – The investigation under this axis has examined:
 - How commitments within GATS framework will impact policy space relevant for protecting the rights of indogenous communities within Mexico;
 - The linkages between unfolding tourism expansion under GATS and regulations/guidelines/international principles, to prevent abuse of women and children;
- (d) Institutional axis – The examination under this axis covers:
 - The interface between tourism and decision-making as well as regulatory powers enshrined with Panchayats in the Indian context;
 - The importance of understanding the relevance of domestic institutions at the central and sub-national levels in the context of unfolding GATS negotiations;
 - The important legislations that will have to be studied in the Indian context while conducting analysis of how negotiations on tourism services under GATS will impact people;

Why is such analysis critical?

We have seen that claims made by us have been rejected on the basis of lack of empirical rigour. By engaging into such analytical exercises the activist will be armed with a strategic research based on empirical evidence. This empirical evidence will provide much required analytical muscle to the demands of communities and moreover will arm activist to go on the offensive, at the local, national and international level.

In essence..

This report has juxtaposed the GATS against sustainable tourism, to develop a framework for analyzing the impacts of the former on the latter. This framework is developed with the intention of arming activists and governments to strengthen their research and bolster their advocacy efforts.




Tourism is the world's biggest and fastest growing industry and that it has the potential to foster economic growth and development globally, is an irrefutable argument. But although it might be pursued for purely economic reasons, the impacts of tourism cut across all spheres to include the socio-cultural, environmental, institutional and economic aspects of development. Therefore there is a pressing need to ensure that globally and locally, tourism develops in a sustainable manner by conserving the resources that it depends on, respecting the democratic and socio-cultural rights of communities it affects and benefiting the region in which it develops.

Acknowledging this need, many international bodies have developed sustainable tourism guidelines and principles that address the sector in all its multidimensionality and which clearly articulate to the government, industry and communities, why and how it can be ensured that tourism development is economically, culturally and environmentally sustainable. Chief among these are the **Global Code of Ethics for Tourism** developed by the World Tourism Organisation (WTO-OMT), the **Sustainable Tourism Guidelines** drawn up by the United Nations Commission on Sustainable Development (CSD) at its Seventh Session held at New York in 1999 and the **International Guidelines for Activities Related to Sustainable Tourism Development** developed by the United Nations Convention on Biological Diversity (CBD)¹. Developed by international institutions and ratified by national governments, these guidelines are reflective of the growing global commitment towards enabling sustainable tourism development.

National governments are also signatories to the General Agreement on Trade in Services (GATS) -one of the many sub-agreements administered by the World Trade Organisation and aiming to develop a set of global trading rules in services, including tourism. Within the ambit of this liberalisation, 125 out of the WTO's 148 members have undertaken commitments under tourism and travel-related services – the largest from amongst all service sectors. However, an understanding of how such sector-specific commitments will impact the nature and form of tourism in developing countries remains unclear. The liberalisation of tourism under the GATS also begs the question of what implications such a process will have on sustainable tourism initiatives enunciated by other international bodies like the WTO-OMT, CSD and CBD; more so when commitments made by governments under the GATS are legally binding while those made under the CSD or CBD are only obligatory. Analysing these two processes simultaneously highlights the two divergent forms of tourism being promoted – one, a service to be traded freely and unconstrained between countries, and another, a genuine tool to be used sustainably to achieve local and collective development.

The need to undertake this analysis in the context of developing countries is even more imperative as tourism is the principal export earner for 83% of the developing world and the principal export for one-third of it (Pro-Poor Tourism 2004). But while the dependence on tourism is high, the share of developing countries in this global tourism pie remains dismally low². Within the WTO, developing countries have largely played



a marginal and defensive role (EQUATIONS, 2002) and trading decisions continued to be influenced by corporate interests and political clout. Given the economic challenge they are already faced with and the need to pursue it responsibly, developing countries have to seriously consider the long-term implications of their sector-specific GATS commitments on the sustainability of their domestic tourism sectors.

Towards fulfilling this need, this report presents, explains and illustrates a framework that has been structured to aid developing countries to analyse the impacts of the GATS on tourism in their region along five dimensions: policy, economic, environmental, social and institutional. In developing this template and the indicators therein, the report has used as its normative framework, the sustainable tourism guidelines developed by the WTO-OMT, CSD and CBD. Section II introduces the framework, the methodology followed for choosing the indicators and the case studies. Section III describes in detail each dimension of impacts by explaining the indicators developed and the analysis made through the lens of countries' sector-specific GATS commitments. Section IV summarises the analysis under a few main points of recommendations.

GATS[®]

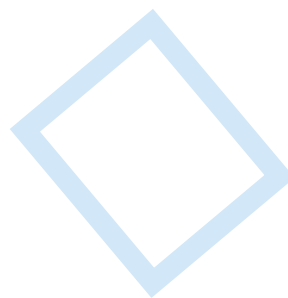
FRAMEWORK and METHODOLOGY[®]

The objective of this report is to present a framework that aids developing countries in their research and analysis of the impacts of the GATS on sustainable tourism. To arrive at this template, this report has used as its normative framework, the three sets of principles governing sustainable tourism developed by the World Tourism Organisation, Commission on Sustainable Development and the Convention on Biological Diversity. Against the background of these principles, the framework analyses the impacts

of the GATS on tourism along five important axes – policy, economic, environmental, social and institutional by identifying indicators under each of these. Section III of this report illustrates each indicator of the template represented in Table 1, with case studies of tourism impacts from across the developing world that highlights the significance of the indicator. The methodology followed for identifying the case studies and researching them is detailed in the following section.

Template to Assess the Impacts of GATS on Sustainable Tourism in Developing Countries

Case studies →	FIJI	EAST AFRICA	CARIBBEAN	BRAZIL	MEXICO	INDIA
Indicators ↓						
I. POLICY IMPACTS						
II. ECONOMIC IMPACTS			✓			
1. Percentage of Tourism Receipts retained locally	✓					
2. Tourism as an Export Mono-crop	✓					
3. Enclavisation	✓					
4. Employment Potential	✓					
5. Role of Small and Medium Enterprises	✓					
III. ENVIRONMENTAL IMPACTS			✓			
6. Loss of Biodiversity		✓				
7. Depletion of and Access to Natural Resources		✓				
8. Pollution		✓				
IV. SOCIAL IMPACTS						
9. Indigenous People					✓	
10. Children				✓	✓	
11. Cultural impacts					✓	
12. Gender perspective				✓		
V. INSTITUTIONAL IMPACTS						
13. Constitutional Framework						✓
14. Domestic Policy and Regulatory Framework						✓
15. International Regulatory Framework						✓
16. International Institutions						✓



Methodology for identifying the Case Studies

The process of identifying case studies to illustrate the different dimensions of this template involved many steps, which have been outlined in this section.

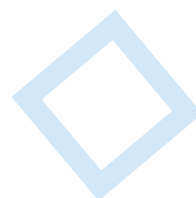
Step 1 – Broad Banding of Countries based on Share of Tourism in the Nation's Gross Domestic Product

The growing importance of tourism indicated through its increasing share in macroeconomic

indicators like a country's Gross Domestic Product, Export Earning, Investment Expenditure and so on are often quoted as the reasons to promote it rigorously. The first step towards choosing case studies to highlight the sustainability concerns that this report is raising, was to get an overview of the importance of tourism to different economies as indicated by its share in a nation's GDP. The following table classifies countries into different bands on the basis of the share of tourism in their national GDP (WTTC, 2004).

Region	% Share of Travel and Tourism Economy in total Gross Domestic Product (GDP)							
	<5%	5-10%	11-20%	21-30%	31-40%	41-50%	50-75%	>75%
O C E A N I A		Solomon Islands	Australia New Zealand Tonga	Fiji Kiribati French Polynesia		Palau Guam Fed Isl. of Polynesia	Vanuatu	

Region	% Share of Travel and Tourism Economy in total Gross Domestic Product (GDP)							
	< 5%	5-10%	11-20%	21-30%	31-40%	41-50%	50-75%	>75%
A S I A	Bangladesh India Burma	Nepal Pakistan Sri Lanka Brunei Cambodia Indonesia Laos Philippines Singapore Vietnam Iran Israel Kuwait Saudi Arabia Syria U.A.E Yemen Oman	Malaysia Papua New Guinea Thailand Jordan Lebanon Qatar	Bahrain Cyprus				Maldives



Region	% Share of Travel and Tourism Economy in total Gross Domestic Product (GDP)							
	<5%	5-10%	11-20%	21-30%	31-40%	41-50%	50-75%	>75%
N A O M R E T R H I C A		Mexico United States	Canada					

Region	% Share of Travel and Tourism Economy in total Gross Domestic Product (GDP)							
	< 5%	5-10%	11-20%	21-30%	31-40%	41-50%	50-75%	>75%
A F R I C A	Burundi Cameroon Central African Republic Cote d'Ivoire Guinea Uganda	Algeria Libya Benin Botswana Burkina Faso Chad Ghana Lesotho Madagascar Malawi Mali Namibia Tanzania South Africa	Egypt Morocco Tunisia Cape Verde Comoros Ethiopia Gabon Kenya	Malta Angola Gambia	Mauritius			

Region	% Share of Travel and Tourism Economy in total Gross Domestic Product (GDP)							
	<5%	5-10%	11-20%	21-30%	31-40%	41-50%	50-75%	>75%
C A R I B B E A N	Haiti	Curacao	Cuba Martinique Puerto Rico Trinidad & Tobago	Bermuda Dominica Dominican Republic Grenada Guadeloupe	Cayman Islands Jamaica St.Kitts & Nevis St.Vincent & the Grenadines Virgin Islands	Saint Lucia	Aruba Bahamas Barbados	Anguilla Antigua & Barbuda British Virgin Islands

Region	% Share of Travel and Tourism Economy in total Gross Domestic Product (GDP)							
	<5%	5-10%	11-20%	21-30%	31-40%	41-50%	50-75%	>75%
E U R O P E		Belarus Bosnia and Herzegovina Latvia Lithuania Macedonia Poland Romania Russian Fed Yugoslavia Belgium Denmark Finland Germany Ireland Netherlands Sweden Norway Turkey	Albania Bulgaria Czech Republic Hungary Montenegro Slovakia Slovenia Ukraine Austria France Greece Italy Luxembourg Portugal United Kingdom Iceland Switzerland Spain	Croatia Estonia Gibraltar Jersey Monaco Malta			San Marino	Andorra

Region	% Share of Travel and Tourism Economy in total Gross Domestic Product (GDP)							
	<5%	5-10%	11-20%	21-30%	31-40%	41-50%	50-75%	>75%
L A M E R I C A	Suriname	Argentina Bolivia Brazil Chile Colombia Ecuador El Salvador Guatemala Honduras Nicaragua Paraguay Peru Uruguay Venezuela	Costa Rica Guyana Panama	Belize				

The dependence on tourism differs greatly between developed and developing countries and within the developing world itself. With the exception of traditionally strong tourism economies in Western Europe, in the majority of the developed world, tourism accounts for

between 5-15% of national GDP. The difference is starker in the developing world where a large share of countries falls into the extreme bands (either < 5% or >50%), signifying the global diversity in the nature of the industry. The choice of case studies (which has been highlighted in

the table) was consciously made so that the template represents countries from all the bands – from those least dependent to the most dependent on tourism. Accordingly the countries/regions identified are Fiji, East Africa, India, the Caribbean, Brazil and Mexico. As the choice indicates, the case studies include both individual countries and regions. A regional analysis is useful to undertake as the physical proximity and similarity in climate, environment and topology result in similar, if not identical impacts of tourism. Even from the negotiating point of view, many regional economic alliances (like the CARICOM and MERCOSUR) negotiate jointly at the WTO where both regional and country-specific concerns are voiced.

Step 2 - Choosing the case studies for each Axis

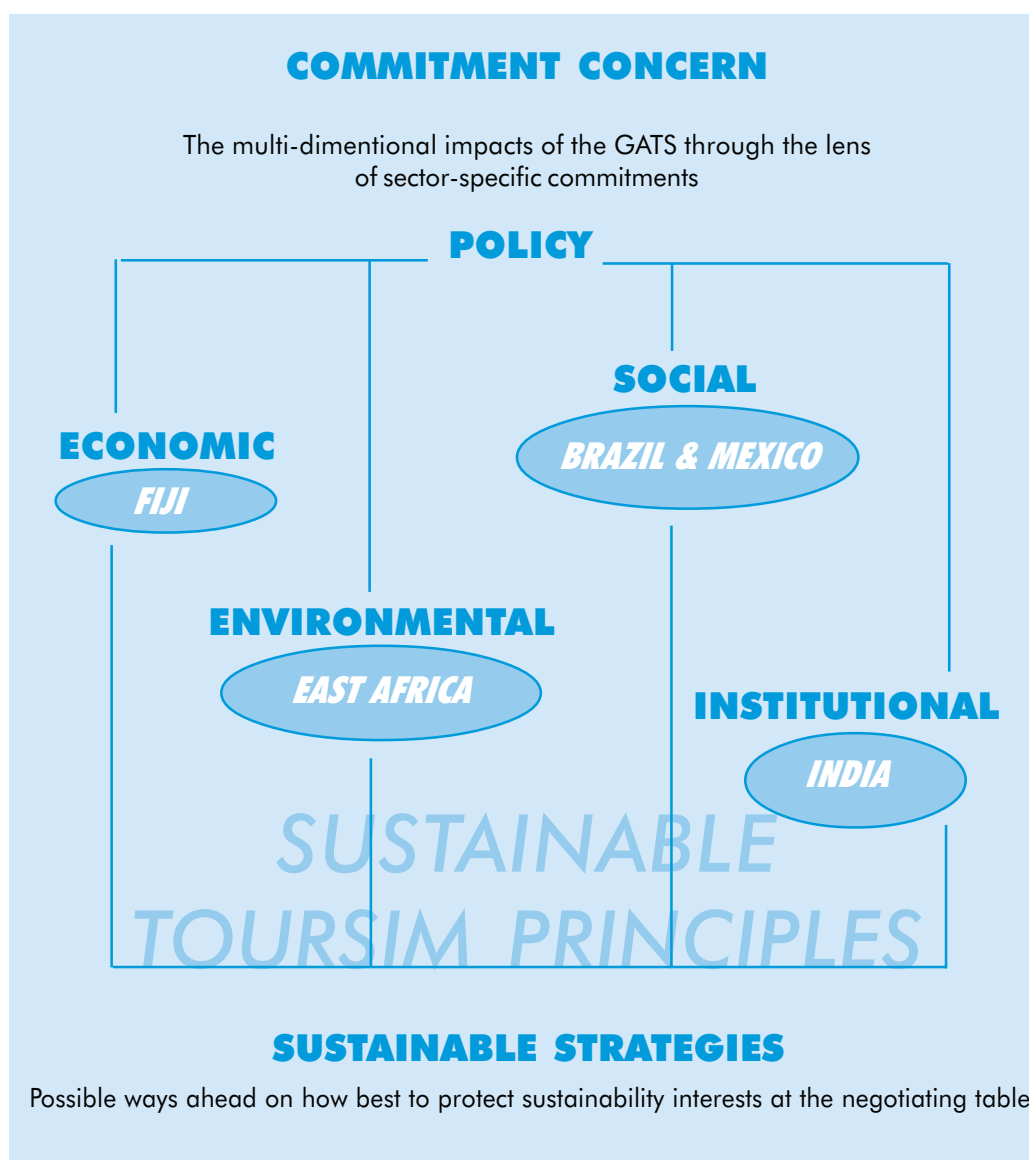
The decision of choosing case studies to correspond to each axes of the template (Economic, Environmental, Social, Institutional and Policy) was taken based on two criteria – a) a study of the country's specific GATS commitments and b) research which highlighted the kind of impacts of tourism that were significant in the region. It must be stressed here that the choice of one region for analysing one axis of the framework was only to make the strongest arguments concerning

the impacts of the country's GATS commitments on that specific dimension of tourism. Therefore, although the range of tourism impacts existing in these regions might be diverse, for the purpose of this report, only one such dimension is being focused upon.

Based on this methodology, Section III does a detailed analysis of the impacts of the GATS on sustainable tourism in these countries. Each dimension begins with an introduction to the liberalisation climate of the country/region chosen as the case study which is followed by an analysis of the impacts of this on the development of tourism using the indicators. The analysis has been done through the lens of countries' specific commitments made under tourism services in the GATS and therefore, the legally binding GATS commitments (as undertaken at the end of the Uruguay Round, 1994) have been inserted for better understanding³. But as the GATS is an ongoing process, moving towards progressive liberalisation of the sector, the analysis of the impacts of the GATS has not been restricted to members' legally binding commitments alone; requests and offers made in the new round of negotiations which began in February 2000 have also been referred to in the analysis. The Annexure provides a summary of the main features of the GATS and the negotiating process.

DEVELOPMENT OF A WTO-GATS-TOURISM IMPACT ASSESSMENT FRAMEWORK

STEP FLOWCHART



Policies are statements of intent highlighting the position, plans and priorities of the government with respect to a particular sector in the country. But unlike other areas, cross-sectoral activities, multidimensional impacts and a complex institutional framework render policy-making in tourism a particularly challenging task. Sustainability in tourism requires governments, especially in developing countries, to overcome this challenge and formulate policies that address the realities facing tourism and then direct its development in an informed, participatory and consultative manner. The ability to comment on or critique the tourism policy of a specific country demands extensive prior knowledge of many factors – the process behind policy formulation, the level of consultation with relevant stakeholders and an in-depth knowledge of the status of tourism in the region. This section does not attempt this task by focusing on the tourism policy of a particular country but highlights few points on the role that the GATS plays in influencing policy and conversely, the role that a well-formulated and focused policy can play in managing the impacts of the GATS domestically.

The Commission on Sustainable Development's tourism guidelines in their reference to policy instruments state that -

For sustainable patterns of consumption and production in the tourism sector, it is essential to strengthen national policy development and enhance capacity in the areas of physical planning, impact assessment, and the use of economic and regulatory instruments, as well as in the areas of information, education and marketing.

The role of policy and policy-making is heightened in the context of analysing the

domestic implications of an international trade agreement like the GATS on sustainable

*“...make tourism liberalisation and responsible tourism mutually supportive...”
(WWF policy statement, 2001)*

tourism. As policies are issued by government agencies and are regarded as the primary document directing development in the sector, they are an important medium

through which to spread awareness among the public on issues pertaining to sustainable tourism. A good tourism policy must prioritise sustainable tourism and outline concrete strategies to achieve it. In this respect, strategies and implementing mechanisms are central to convert the policy from a paper document to being a practical tool to foster change. Therefore a good tourism policy should strive to bridge rather than widen the gap between objectives and ground realities facing tourism development.

Acknowledging the GATS

The development of a domestic strategy to face the challenge of the GATS must begin with acknowledging its presence as an influencing factor in the policy space. For example, the plan for tourism development in the Maldives, incorporated in the country's Sixth National Development Plan (2001-2005) explicitly outlines the threats that the island nation faces from liberalization–

“The exposure to exogenous threats requires negotiation of specific economic concessions, both at bilateral and multilateral levels... which takes cognizance of the country's environmental vulnerability. This would be an increasingly difficult task as trade liberalization

under the World Trade Organisation gains further momentum. The government also has to play a proactive role in contributing towards the development of a global order that protects the environment and compensates its vulnerable members."

But in many cases, it is disheartening to note that even this primary objective is left unfulfilled. The National Tourism Policy (2002) of India, while addressing the need for sustainable tourism does not even make a cursory mention of the GATS. This lapse often results from government departments and agencies understanding and executing their roles in a restricted manner without adopting a holistic approach to sectoral development.

Policy-making Process

The extent to which any government respects the democratic fibre of its society is clearly reflected in its policy-making process. Policies must be the outcome of a participatory and consultative process whereby all stakeholders and most importantly local communities are informed of and involved in the process of policy formulation. In recognition of this principle, CSD guidelines urge governments to *'...consult, as appropriate, with all major groups and local communities in the tourism development process, including policy formulation...'* More often than not, policies that are formulated without appropriate consultation are hollow in their understanding of the complexities of tourism development and fail to achieve significant local participation at the implementation stage of projects. It has also been noticed that when governments do indulge in participatory methods, it is often under the garb of 'stakeholder participation' where 'consultations' are held with very short notice and where the participants mainly comprise experts and professionals with negligible

representation of the local community. Therefore caution must be borne that communities and civil society is not co-opted into such pseudo participatory mechanisms and that the process of consultation is thorough and authentic, where impacted communities can directly voice their apprehensions and concerns. It is equally important to ensure that while sector-specific policies might be the mandate of a particular government department/agency, a comprehensive policy for tourism calls for extensive consultation amongst all departments involved in tourism activities.

Lobbies influencing Tourism Policy

Policy formulation is a political process and is therefore susceptible to considerable influence by internal and external lobbies that might manipulate it to pursue vested interests. Such influence begins by relegating the government to the role of a 'catalyst' or 'facilitator' in tourism development and even in situations where the government is to take the lead, to place the onus of development and conservation on the private sector (EQUATIONS 2002). The influence of external agencies is explicit with the World Tourism Organisation calling itself a *'global forum for tourism policy issues'* and the World Travel and Tourism Council categorically asserting that *"there must be a fundamental change in the government's attitude towards the development of the accommodation sector. The government must stand forth as a facilitator, not a regulator or a roadblock (WTTC 2001)"*.

The influence of the domestic tourism industry on moulding policy to serve their own needs is also quite apparent in their requests for deregulation. For instance in India, the Coastal Regulation Zone Act (1991) is a powerful piece of legislation in the regulatory framework of the country that aims to regulate all activity in coastal areas by classifying them on the basis of their sensitivity and fragility into different zones

of development. From the time of its announcement, this legislation has come under severe criticism from national and international industry bodies that have overtly pushed for its dilution while covertly violating it. The WTTC states that *"the coastal regulation zone act, which instead of protecting the environment has become one of the biggest stumbling blocks to the development of sea-side resorts."* As a result, many tourism policies of state governments in the country reflect the same sentiment – the Karnataka State Tourism Policy (2002-2007) asking to *"simplify the implementation of CRZ"*; the Andhra Pradesh Tourism Policy (1992) seeking to *"...examine projects that fall within Coastal Regulation Zone Areas and suggest remedies to facilitate early clearances from the Ministry of Environment and Forests"* and the Tamil Nadu Tourism Policy note (2000-01) to *"try and remove the CRZ restrictions especially in the special tourism area."* All these statements point to the effect that powerful industrial lobbies can have on the existing regulatory framework through the instrument of government policy.

Which Tourism Policy?

The question is an important one to ask in federal frameworks, which give both central and regional governments the authority to formulate sectoral policies. In such situations,

even if a certain degree of compatibility is achieved between policies at different levels, in the context of the GATS, regional policies will be turned redundant as the GATS recognizes only commitments and concerns reflected by national governments. The role and standing of regional policies is questionable in such a framework and there is no simple solution to this dilemma except that governments make efforts to coordinate policies they develop.

Within the framework of the GATS it remains unclear as to how the agreement is going to play out for sustainability and participatory initiatives in tourism. In its current form, little can be said on the status of negotiations in the new round and what the implications of their outcomes are going to be on domestic regulatory and policy-making spaces. But what can be said with utmost emphasis is that a comprehensive tourism policy is a prerequisite to sustainable initiatives in any country. Lacunae in tourism policy that arise out of improper consultation or poor implementation can lead to non-fulfilment of the very objectives that the policy outlines. Policies, if developed by governments as an appropriate tool for information dissemination, coordination and awareness building can also help mitigate the adverse impacts of tourism along many dimensions which the following sub-sections detail.

GATS

ECONOMIC IMPACTS

The indicators developed in this section are designed to provide an assessment of the impacts of the GATS on economic sustainability of tourism. These indicators have been identified keeping in mind the recent initiatives undertaken by international agencies to measure the economic impact of tourism using Tourism Satellite Account (TSA) Research⁴. While TSA research is designed to measure the economic impact of tourism by collecting data on certain set macroeconomic variables, the indicators in this template are designed to measure the economic sustainability of tourism for developing economies. The case study chosen for this

assessment is Fiji, a country in which tourism, directly and indirectly accounts for 27.2% of total GDP (WTTC, 2004).

Status of Liberalisation in Fiji

Fiji joined the WTO in 1996 and as part of the Uruguay Round of commitments it has bound all its agricultural tariffs, 43% of industrial lines and undertaken commitment under the GATS in tourism services only. As the table indicates, initial commitments made by Fiji in tourism cover only two sub-sectors but with no limitations under Modes 1&2 and only partial limitation under Mode 3.

Fiji's Vertical Commitments in the Tourism Sector

SUB-SECTOR	Central Product Classification Code	Modes of Supply	Limitations on Market Access	Limitations on National Treatment
Hotels, Motels and other Tourist Accommodation	641	1 2 3 4	None None Govt. approval & registration required Entry limited to a) management based and b) skilled employees for 3 yrs where positions cannot be filled locally	None None None Skilled foreign employees to provide training to locals
Restaurants	642	1 2 3 4	None None ♦ Govt. approval & registration ♦ Speciality restaurants only Entry limited to a) management based and b) skilled employees for 3 yrs where positions cannot be filled locally	None None None Skilled foreign employees to provide training to locals

The forces of liberalisation have been working strongly in the country over the last decade especially in an attempt to get the economy back on track after the economic instability caused by the coups of 1987, 1997 and 2000. In its report to the WTO Trade Policy Review Body, the Fijian government, while committing to liberalisation and whole-heartedly supporting private enterprise, has expressed its apprehensions from hasty liberalisation because of its vulnerable geographic location, poor bargaining power and developing country status⁵. With regard to tourism specifically, the government has committed to encouraging private participation in the industry and accordingly, look into pertinent issues like air access, infrastructure, structure of the accommodation sector and human resources development. The government also plans on bringing out a Services Sector Policy that would boost exports, streamline procedures and ensure greater transparency in government policy.

Fiji's new offer on the GATS, tabled in June 2003 to the Council of Services has expanded the scope of the country's commitments under the GATS to include business services and environment services, in addition to tourism. The new offer also includes a substantive portion under the horizontal commitments section where important limitations have been placed - like making new foreign investors seek approval from the Fiji Investment and Promotion Board before entering the domestic market, taking into account factors like level of local Fijian participation in the activity and its overall effect on the nation's financial and economic situation and giving the government the right to reject proposals if they found them to be against Fiji's national interest on any account. Surprisingly, the offer states that these limitations placed in its horizontal commitments section apply to all service sectors included in

the schedule with the exception of tourism services. The reasons for this exclusion need to be investigated, as the tourism sector is as much in need of these limitations to ensure its sustainability locally as all other services.

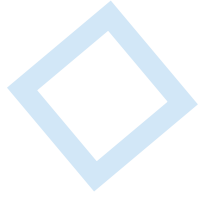
Indicator 1 – The percentage of tourism revenues retained in the local economy

The economic rationale behind encouraging tourism is that through its linkages with other sectors of the economy, revenues generated from tourism activities can increase the economic prosperity of the local people. This argument would not hold if revenue generated from tourism were not retained within the local economy but were instead leaked out through repatriation or other means⁶ thereby nullifying the potential gains to the local economy. An analysis of the leakage effect vis-à-vis the linkage effect of tourism within the local economy is vital to understand the benefits of increased tourism activity and how liberalizing trade would in turn affect it. Therefore, while the TSA provides data on the contribution of tourism to a nation's GDP, this indicator assesses the actual benefit to the local economy.

Both the WTO Code of Ethics and the CSD sustainable tourism principles emphasise the point that tourism activity must benefit the local economy and people. The CSD, in particular has invited the UN secretariat and the WTO-OMT to form an ad-hoc, informal open-ended working group on tourism to assess financial leakages and determine how to maximise benefits for indigenous and local communities in consultation with relevant groups.

The Assessment

An official estimate puts the level of foreign exchange leakage from gross tourism receipts in Fiji at 56% - a staggering figure for a country so heavily dependent on the



sector (CSD, 1996). Research also indicates that a large portion of this leakage is attributable to the accommodation sector – the most important revenue earner for the Fijian tourism economy. The 2001 Visitor's Survey for Fiji indicated that accommodation (board and lodging) accounts for 70.2% of all visitor expenditure and that out of this, 89% of visitors used hotels. Licensing statistics further indicate that out of the 215 licensed accommodation establishments, only 10% are owned by Fijians (41% by Fijian-Indians, 25% by international hotel chains and the rest by other foreign companies). While all foreign-owned enterprises will add to the level of export leakage due to repatriation of profits, international hotel chains in particular can lead to high import leakage as well, as they strive to maintain 'international standards' in accommodation and therefore resort to importing equipment, food, drinks and other resources.

Recognising this disturbing trend, the Fiji Foreign Investment Act 2004 has identified tourism as a *restricted activity*⁷ and placed limits on equity holdings by foreign establishments. Some of these are -

- An operator of leisure cruises must have at least 51% equity held by Fiji citizens.
- Any activity involving investment in the cultural heritage of the Fiji Islands must have at least 51% equity held by Fiji citizens
- A tourism business or venture or a facility ancillary to the tourism business must have at least Fijian\$ 100,000 in fixed assets.

These limitations are important, as they will go to a significant degree in curbing the level of export leakage of tourism receipts in Fiji. But the important question to ask is how a domestic law such as this plays out in the context of the GATS and has Fiji ensured that these limitations are

valid by explicitly placing them in its commitments schedule as well.

In its GATS commitments schedule, under the tourism sub-sector, Fiji has placed no limitations under National Treatment while it has limited Market Access only to the extent that government approval and registration is required for two sub-sectors it has undertaken commitments in. While this limitation would subject all foreign investors to the regulations of Fiji's Foreign Investment Act, the bone of contention is whether this is a valid limitation for any country to place in its commitments schedule. This is because Article XVI of the GATS that pertains to Market Access permits governments to place only six kinds of limitations in their GATS commitment schedules -

- The number of service suppliers
- The total value of transaction of transaction or assets
- The total number of service operations or quantity of service output
- The total number of natural persons
- The requirement of a certain type of legal entity or joint venture
- The participation of foreign capital

As Fiji has not made explicit mention of its limitations on foreign capital in its schedule, but has put down government approval, it remains ambiguous as to what the standing of the Act is and whether it will be recognised as a legitimate tool for limiting market access. Further, the liberalisation of the accommodation sub-sector by Fiji, in a situation when the leakage rates are already so high, could seriously jeopardise the economic benefits that Fiji hopes to gain through tourism as the entry of multinationals might only aggravate the situation.



Indicator 2 – Tourism as an Export Mono-Crop?

The Convention on Biological Diversity urges governments to reduce the dependence of the economy on tourism and assist indigenous communities to widen their economic base. Tourism is different from other services in that it takes the people to the product and therefore the success of tourism in any destination is hugely dependent on the perception that the destination enjoys in the eyes of the tourist. Tourism is highly susceptible to both external and internal shocks thereby putting the revenue it earns and the employment it provides at stake. Therefore, while the TSA statistics indicate how tourism ranks in comparison to other sectors of the economy, this indicator assesses to what extent the economy is dependent on tourism (for

income, export earnings and employment) and what concerns this raises for sustainability.

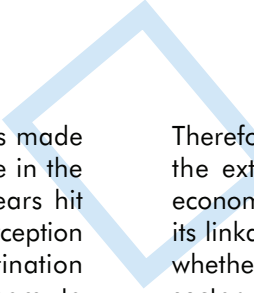
The Assessment

36.6% of Fiji's export earnings come from tourism (WTTC, 2004) indicating a high dependence of the economy on revenues from the sector. This dependence has been increased because of the gradual erosion of the comparative advantage enjoyed by other Fijian exports like sugar and clothing after the opening up of world markets and tariff reduction. Additionally, international tourism in Fiji has high seasonality and relies on few countries like Australia (accounting for 28.2% of total arrivals) and New Zealand (19.1% of new arrivals) due to their proximity to the island. The table below provides data to substantiate the argument that tourism has come to play a leading role in the Fijian economy.

Tourism foreign exchange earnings compared to other important sectors 1998-2001

Year F(\$) mil	Tourism F(\$) mil	Food includes sugar, fish, fruits and vegetable	Beverage and Tobacco	Crude materials (includes timber, yaqona)	Animals and vegetable oil and products	Chemicals	Manufactured Goods
1998	482.5	338.9	3.4	88.8	9.2	3.1	53.2
1999	558.6	375.3	7.2	45.1	11.7	5.0	61.8
2000	413.5	415.1	19.4	50.2	4.7	7.9	76.3
2001	521.1	399.0	29.3	52.2	3.1	8.4	65.8

SOURCE : Report prepared by Tourism Department, Government of Fiji.



Its heavy dependence on tourism has made the Fijian economy pay a heavy price in the past. The military coups of recent years hit the tourism industry hard due to the perception of the island as an unsafe tourist destination and caused the GDP of the entire economy to plummet by 2.8%. A main cause for this fall in tourist arrivals was the decision of Australian and New Zealand airlines not to operate flights to Fiji during this period for political, economic and security reasons. Accessibility by air is an important prerequisite for the good health of the tourism sector in Fiji as it is a small island nation situated in the Pacific and the impact would have been far worse were it not for Fiji's national airline, Air Pacific, which continued to ply. Fiji therefore, is one of many examples of economies, which, due to their increasing dependence on tourism could jeopardise the prosperity of the entire economy due to internal shocks (political instability, epidemics, natural disasters) or external influences (political, economic decisions/shocks in countries sourcing the tourists).

In such precarious situations, it is important to analyse the commitments made by countries under the GATS in conjunction with domestic liberalisation attempts and bilateral trade agreements the country enters into. In the case of Fiji for example, although the country has not made commitments under the travel agent, tour operator or transportation service-heads of the GATS, domestically the Ministry of Aviation has voiced its intention to merge the national airline with QANTAS (Queensland And Northern Territory Aerial Services limited - Australia's largest domestic and international airline) and Air New Zealand⁸. While this might serve the immediate purpose of increasing the scale of service to Fiji, the long-term repercussions of leaving an essential service in foreign hands must be taken into account.

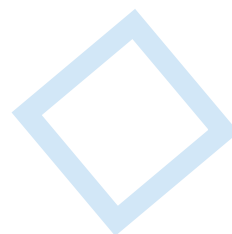
Therefore the indicator is important to assess the extent to which liberalisation aids the economy in widening its base by strengthening its linkages with other sectors, or, in contrast, whether it increases its dependence on one sector like tourism. If tourism is an export mono-crop for the economy, the analysis must be widened to see what processes are creating this singular dependence and impeding other sectors (like sugar, textiles in the case of Fiji) from become major export earners as well.

Indicator 3 – The Role of Small and Medium Enterprises (SMEs) in Tourism

In order to allow tourism to benefit and sustain the local economy, mechanisms must be developed to encourage and support small and medium enterprises that require low levels of investment but provide high levels of employment to the local labour force. CSD principles stress the need for this by urging governments to create a favourable framework for small and medium-sized enterprises by reducing administrative burdens and providing financial and technical support. This indicator would help assess the extent of local participation in the tourism industry, the benefits that the local industry derives from it and how sustainable tourism is for the local economy.

The Assessment

Fiji's tourism industry has representation from both local enterprise and international players with the latter having a significant presence in major tourist destinations like Nadi Bay and cruise point Lautoka. Local Fijians do however have a comparative disadvantage in terms of finance and technology to run tourism enterprises efficiently. The table summarises the requests received by the Fijian Ministry of Tourism from indigenous Fijians to set up or operate tourism businesses. The government of Fiji has taken several measures to overcome this constraint like initiating Human Resource



Development Programmes and Employment Creation Programmes. A significant measure to boost SMEs in tourism has been taken through the Foreign Investment Act 2004 which reserves several activities connected to tourism provision for Fijian citizens only. These include setting up of a milk bar/cafeteria business; restaurant business other than specialty restaurants; taxi/car hire or bus business; a handicraft business or setting up of a roadside stall.

Paradoxically, the domestic incentive structure for the tourism industry reflects a bias favoring large-scale enterprises in the tourism sector. The Hotel Aids Act of Fiji has outlined a Five-Star Hotel Package that provides developers with large incentives like duty-free import of capital equipment, no payment of corporate tax for 20 years, the permission to carry forward losses for 6 years and duty concessions for importing items associated with resort development like fittings, furniture, water sports equipment, boats/vessels/yachts, kitchen equipment and cutlery.

With this divergence, it is important to see which kind of enterprise is strengthened by trade liberalisation through GATS and which weakened. With Fiji's nature of commitments, the validity of the Foreign Investment Act remains questionable even in this case and therefore one cannot be sure to what extent it would succeed in supporting SMEs by reserving

activities for them. Also, by placing no limitations on national treatment, Fiji has committed itself to treating foreign investors in tourism equally as their domestic counterparts. This would permit all foreign enterprises to avail of the attractive incentive package drawn up to promote large hotels, which could have an adverse effect on domestic small and medium service providers and could well increase the leakage, reducing the benefit to the local economy. If promotion of SMEs in tourism is a priority for the Fijian government and a necessity of the economy, it is difficult to say to what extent this will be supported given the nature of commitments made in the GATS.

A strong argument supporting liberalisation of trade in general is that the spirit of competition it infuses by opening markets to foreign players would force all kinds of enterprises – small, medium and large to function more efficiently, cost-effectively and quality consciously. The only caveat is that small and medium enterprises, if not given sufficient time and assistance to enable them to face foreign competition would be obliterated even before the challenge beings. Sustainable tourism involves supporting SMEs and to ensure this, countries must adopt a cautionary approach to committing under the GATS so that these objectives are not defeated.

<i>Assistance Requested</i>	<i>Technical Assistance</i>	<i>Financial Assistance</i>	<i>Marketing</i>	<i>Other</i>	<i>Not Specified</i>	<i>Total</i>
<i>Accomodation</i>	21	10	6	3	1	41
<i>Activity</i>	23	15	10	2	0	50
<i>Others</i>	5	0	0	3	1	9

Indicator 4 – Enclavisation

Enclavisation, in the context of tourism refers to the process of converting tourist destinations into enclaves – exclusive islands where mass tourism can flourish - thereby detaching them from the local environment, culture and economy. Globally, the process of enclavisation in tourism has been a result of the need to create exclusive centres of mass tourism, which exploit local resources but provide little benefit to the local economy. Enclaves are also often viewed as safe investments, which would ensure a steady, continuous and reliable, flow of income from tourism through all seasons. Policy initiatives that identify regions as Special Tourism Areas, Special Tourism Zones, Special Economic Zones and so on, trigger the process of enclavisation by calling for intensive tourism development in few chosen spots. Such concentrated development, if not reined and regulated can have significant social, cultural, environmental and economic ramifications for the local people. The concept of enclavisation can also be interpreted to signify a creation of employment enclaves where tourism development provides certain kinds of employment to certain kinds of labour force, locking people in without providing them a chance to climb up the employment ladder. This paper has chosen to analyse the process from the economic perspective because of often-strong economic incentives and arguments that lay the ground for converting destinations to enclaves.

CSD sustainable tourism principles call for developing forms of tourism that are environmentally, socially and culturally compatible. They also urge the industry to design projects keeping nature in mind to see that they do not harm the environment.

The Assessment

As in most regions, development of tourism in Fiji has led to its concentration in a few geographic areas like the Western and Southern Coast of the main island of Viti Levu, which has popular destinations like Nadi Bay, Lautoka and the Mamanuca Islands. Together, these three destinations account for 80% of the tourists visiting Fiji (WWF, 2003)⁹. Nadi Bay in particular has the largest number of accommodation establishments in Fiji and faces social problems like increased crime rates and prostitution that have been linked to tourism activity in the region. Another significant social problem has been the widening of income disparities between different regions of the islands as tourism continues to develop in already affluent regions, contributing little to poverty alleviation in backward regions of the country. This again violates sustainable tourism guidelines that urge governments to maximise the benefit of tourism for the eradication of poverty.

The Fiji Tourism Development Plan (1998-2005) also identifies Nadi Bay and Mamanuca Islands as 'Tourism Development Areas' where tourism is going to be promoted in a integrated and consolidated manner by allowing single-window clearance for projects, developing tourism infrastructure, maintaining quality standards and giving easy land lease access to developers.

Fiji's commitments under tourism services have not placed explicit zonal limitations nor limited the number of service providers or quantity of service provided – limitations that could have reduced the concentration of tourism in already congested regions. Placing no limitations under national treatment would allow foreign investors an equal right to invest in Tourism Development Areas and utilise the incentives provided therein. Therefore, the limitations placed by Fiji may not be sufficient to control the disturbing trend of enclavisation that already exists in the island.



Indicator 5 – Employment Benefits to the Local People

Tourism is regarded as a labour intensive-sector as it creates jobs directly through tourism activities and indirectly through the ancillary industries it supports. But what percentage of this employment created constitutes local people is a question that must be investigated as it indicates the extent to which tourism supports and strengthens the local economy. It is equally important to investigate what kind of jobs the local people are employed in and whether such employment is in consonance with international labour norms and standards.

Supporting small and medium enterprises locally is one measure that can increase employment opportunities for local people. Explicitly, the WTO Code of Ethics states that local populations must benefit from tourism activities and especially from the direct and indirect jobs created from them. Article 9 of the Code also stresses the Rights of the Workers and Entrepreneurs in the Tourism Industry through ensuring their job security, protection, access to training and sharing of experiences keeping in mind the seasonality and global dimension of their work. The article also highlights the corporate social responsibility that multinational corporations involved in tourism must pay attention to¹⁰. The CSD states the role that implementing Local Agenda 21 Principles by governments can play in bolstering the local economy.

The Assessment

Fiji's Tourism Satellite Account statistics state that the tourism industry (directly) employs 10% of the labour force while the wider tourism economy (directly and indirectly) provides employment to 25.4% of the Fijian labour force (WTTC, 2004). There is no disputing the fact that tourism is the country's main employer, especially of indigenous people. Though Fijian

citizens (including indigenous Fijians and Fijian Indians) do own a large number of tourism enterprises, including luxury hotels, the profile of employment reflects a tilt towards low-skilled and therefore low-paying jobs. The Fijian government has taken initiatives to overcome this constraint by using its domestic regulation to support the reservation of certain activities for Fijian citizens only and in parallel, run training programmes to upgrade their skill base.

The GATS dimension that most deeply impacts the domestic employment scene of any country is commitments made under Mode 4 permitting the presence of foreign nationals employed in the provision of the service. Fiji's Mode 4 commitments have done well to ensure that tourism employs local people and simultaneously helps them overcome their low-skill base. Fiji's Mode 4 Market Access commitments state that entry of foreign nationals is limited to posts requiring high managerial or technical skills and that such employment is time bound; its National Treatment commitments state that foreign personnel are to provide on-the-job training to locals. These measures will go far in securing the employment gains from tourism to Fiji's local population.

Fiji is also signatory to 24 international conventions relating to labour standards, the domestic implementation of which has been secured through the Fiji Employment Act that provides security to workers, especially women and children, employed in the informal and formal sectors. Nothing that Fiji has stated in its Mode 3 commitments would mandate foreign enterprises to subscribe to these international conventions but the strict enforcement of the Employment Act domestically can certainly assure better labour standards in the tourism industry.

The Special Case of the Caribbean Cruise Tourism Industry

The Caribbean is undoubtedly one of the world's most popular tourist destinations and a preferred mode of enjoying vacations in the region is aboard a cruise ship. This section analyses the economic impacts of the Cruise Tourism Industry on Caribbean Economies and the peculiar complications that arise regarding this in the GATS.

The Organisation of American State's Inter-American Committee on Ports states that the Caribbean is the leading destination for the world's cruise tourists as it accounts for 47% of the world market share. When most Caribbean countries began opening up their tourism service markets, cruise ships were considered as an easy way of drawing tourists in large numbers to these islands. Therefore the foreign cruise ship industry received economic incentives, governmental infrastructure support and an aggressive government-funded publicity campaign to attract customers. As a result, today, tourism in many Caribbean countries thrives because of the cruise ship industry with the number of cruise-ship tourists in the majority of the countries being greater than the number of stop-over tourists (Caribbean Tourism Organisation, 2004). The rate of growth of the cruise ship industry is uniformly higher in all Caribbean economies compared to the stop-over tourism industry with some of the highest growth rates registered in upcoming destination countries of Belize, Guyana and Dominica.

Cruise Tourism directly competes with local land-based tourism establishments, often to the detriment of the latter. This is due to many factors– firstly the direct benefits that cruise tourism brings to the local economies is lesser than land-based tourism as cruise ships use local resources and employ local people to a lesser degree than land based activities do. Secondly, cruises usually operate as package tours which provide the entire tourism experience of the destination on board the ship itself including shopping for local handicrafts and souvenirs, tasting the local cuisine and experiencing the local art and culture. This severely constrains tourists from touring the actual destination physically and through this limits their financial contribution to the local economy. Even if the ship docks and tourists are allowed to explore the area, this is usually limited to the port area only. Thirdly, their economic power has also enabled cruise ships to benefit from perpetrating false myths among passengers about the safety of the port destination and thereby encouraging them to continue staying aboard (Klein, 2003). Klien elucidates the point by highlighting that the major revenue-earner for cruise ships is on-board revenues that approximate US \$ 300 per passenger per day. In order to increase the same, cruise ships were allowed to open bars, casinos and shops while they remained docked. Caribbean Cruise companies also provide unique products to their customers by taking them to 'fantasy islands', which are off limits for everybody but their passengers and crew. Of the 8 major cruise lines operating regularly in the Caribbean, six own private islands such as Half Moon Cay, Casaway Cay, Great Stirrup Cay, Princes Cay, Serena Cay and Coco Cay, which they include among their ports of call.

The oligopolistic structure of the industry has also limited the ability of small local entrepreneurs to make inroads into the mammoth billion-dollar industry and gain meaningfully from it. Three giants – Royal Caribbean, Carnival Corporation and Princess had a combined revenue figure of US \$ 11.5 million in 2002 (Klien, 2003) indicating the extent of monopoly profits made. Additionally, cruise ships also result in large expenses for the government exchequer to provide adequate port infrastructure. Post September 11th, the Caribbean cruise tourism industry has suffered a set back due to the mushrooming of home ports like San Francisco, Seattle, San Diego, Los Angeles, New Orleans in the United States which allows cruisers to enjoy the same experience without having to fly to Puerto Rico to board a ship to the Caribbean (Arthurley, 2004). All-in-all, cruise tourism in the Caribbean begs the question of how sustainable it is for the local economy in the long-term.

Analysing the impacts of the GATS on Cruise Tourism is complicated because as per the classification of service sectors used in the GATS, cruise ships are enlisted under Maritime Transport Services and not Tourism Services. As a result, even though their main activity is tourism, measures to restrict cruise ship arrivals into the country would require countries to place limitations under the Maritime Transport Services rather than Tourism Services. This anomaly has caused the Caribbean to seriously push for the reclassification of Cruise Ships under Tourism Services in the GATS given their economic and environmental impact on the region (CRNM, 2003) – a view that has been supported by the Caribbean Hotel Association¹¹. However, the report also recognises that this reclassification would have little practical effect on the impacts of cruise tourism in the region as countries are already entitled to place limitations under Maritime Services if they wish to. It must be stressed that endeavouring to reclassify cruise ships might be a measure that would consume a lot of time and energy at the negotiating table given the nature of proceedings.



GATS[®] ENVIRONMENTAL IMPACTS[®]

The indicators described in this section highlight the impacts of the GATS on sustainable tourism along the environmental dimension using three criteria that are wide in their definition and encapsulate a multitude of environmental impacts that tourism has. Although not all-inclusive, these indicators have been structured and analysed to elucidate how the GATS commitments undertaken by countries could affect the environmental sustainability of tourism.

The case study chosen for highlighting this environmental dimension is the region of East Africa comprising Kenya, Tanzania and Uganda. There are important similarities in tourism development of these countries including the fact that the tourism product of all three is nature-based revolving around wildlife tourism and coastal tourism and also that economically, tourism contributes between 5-10% of GDP in all three countries. The major difference lies in the stage of tourism development currently in these countries as tourism came first to Kenya in the 1960s, then Tanzania and much more recently into Uganda. Over the last five years, the fall in tourist arrivals to Kenya, largely due to environmental degradation, pollution and congestion, has been matched by an increase in tourists flowing into neighboring Tanzania.

Status of Liberalisation in East Africa

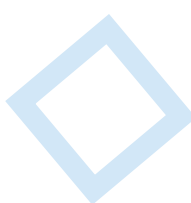
Due to the diversity in their economies and differences in the status of tourism development in many regions, there is considerable difference in the nature of commitments made under tourism services in the GATS. The following table provides an overview of the legally binding commitments undertaken by Kenya, Tanzania and Uganda for tourism services under the GATS.

The variations in the nature of commitments is clearly visible with Kenya adopting the most liberal stand, followed by Uganda and lastly Tanzania which has taken the least-liberal stand by only opening up the sector of Hotels above Four Stars to foreign investors. A trend that is noticeable from these commitments and which can be extrapolated from the commitments made by other African countries in tourism, is the willingness to open up trade in tourism services through commercial presence under Mode 3. A possible explanation for this could be that African nations want the commercial presence of foreign investors in their domestic tourism sectors as either they do not possess the resources or the knowledge to direct tourism development in their own territories (ECA, 2002).

However, for a comprehensive understanding of how liberalisation processes affect sustainable tourism in the region, the scope of the analysis has to extend beyond the GATS as it is but one of many international instruments influencing trade in the region. Since the 1970's, given the gravity of the poverty situation in these countries – particularly in Tanzania, the role played by international financial institutions like the World Bank Group and the International Monetary Fund in national economic policy formulation and intervention has been deepening. In the early days of their intervention, tourism received considerable attention from these agencies but in recent years, attention has shifted away from tourism, into related sectors like air transport, water and health. More than the direct lending through specific projects, it is their influence on policy-formulation and the functioning of institutions that is a greater cause for concern in these countries. The World Bank and IMF

*A compilation of Kenya's Tanzania's and Uganda's
Vertical Commitments for the Tourism Sector*

	Mode of Supply	Limitations on Market Access			Limitations on National Treatment		
		Kenya	Tanzania	Uganda	Kenya	Tanzania	Uganda
Hotels and Restaurants CPC 641-643 (Tanzania only for Hotels of 4 stars and above)	1	Unbound	None	None	Unbound	None	None
	2	None	None	None	None	None	None
	3	None	Acquisition of land and mergers subject to approval	Govt approval needed	None	Unbound	None
	4	Unbound except as in HC	Unbound except where for top managerial posts	Unbound except for technical expertise & personnel subject to all national laws	None for those persons referred to in HC	Unbound	Unbound except where for technical expertise & personnel subject to national laws
Travel Agencies and Tour Operators CPC 7471	1	None	NOT COMMITTED	None	None	NOT COMMITTED	None
	2	None		None	None		None
	3	None		Govt approval needed	None		None
	4	Unbound except as indicated in HC		Unbound except for technical expertise & personnel subject to all national laws	None for those persons referred to in HC		Unbound except where for technical expertise & personnel subject to national laws
Tourist guide Services CPC 7472	1	None	NOT COMMITTED	NOT COMMITTED	None	NOT COMMITTED	NOT COMMITTED
	2	None			None		
	3	None			None		
	4	Unbound except as indicated in HC			None for those persons referred to in HC		



(International Monetary Fund) have had a role in creating new parallel institutions and forging a privatisation drive of many existing government ones involved in management of water, health and transport sectors. On a policy level, the Poverty Reduction Strategy Papers of all three countries have specifically identified tourism development as a poverty alleviation strategy for the region, which have important elements of privatisation and deregulation in them¹². Their influence therefore comes in different forms at different levels and governments must be conscious of this. So while Tanzania's commitments under the GATS might not be serious cause for concern, the influence of IFIs on domestic policy is reflected through Tanzania's National Tourism Policy which guarantees foreign investors the right to transfer out of the country 100% foreign exchange earned from their enterprises. The fact is that a domestically liberal policy feeds into the process of international liberalisation and therefore the difference between what happens at the GATS and what happens domestically might not be a discrepancy at all but just a roundabout process of opening up markets.

Therefore, while addressing sustainable tourism concerns, one cannot ignore the influence of other international agencies that might, through political persuasion or economic coercion force an unwilling country to adopt an open-door policy to foreign investment in tourism.

Indicator 1 – Loss of Biological Diversity

The Convention for Biological Diversity defines the term 'biological diversity' to mean the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems. Biological Diversity is an important component of the tourism product of any region; so much so that some economies are solely dependent on it for their sustenance. But more


than being a natural attraction, biodiversity is an integral part of every ecosystem and plays a key role in maintaining the ecological balance and environmental sustainability of the region. Therefore, if not conducted in a sustainable manner, tourism activities can cause irreversible damage to the environment through species depletion and ecological degradation. Tourism, for its own sustenance has the primary responsibility of conserving the resources that support it.

Recognizing this role of tourism, the Convention on Biological Diversity has drawn up specific guidelines for the development of tourism in vulnerable ecosystems and habitats. These comprehensive guidelines detail steps that need to be taken at all levels of tourism to ensure conservation of biological diversity and stress collection of baseline information at the proposed development site, multi-stakeholder decision-making and compliance with existing laws and regulations.

Article 3 of the WTO Code of Ethics articulates the need for all stakeholders in tourism development to be responsible for environmental conservation. In directly addressing the industry, the Code also states that tourism professionals should agree to the imposition of limitations on tourism activities in especially sensitive zones like deserts, polar regions, coasts, hills and mountains, tropical forests and wetlands. Sustainable Tourism guidelines of the CSD go a step further in urging governments to use tools like coastal zone management, environment impact assessments and land-use planning to develop tourism in an environmentally sustainable manner.

The Assessment

Kenya, Uganda and Tanzania are the treasure troves of Africa's rich and diverse wildlife and this facet has been the major reason for intensive tourism development in the region. A discussion paper by KIPPRA (Kenya Institute for Public Policy



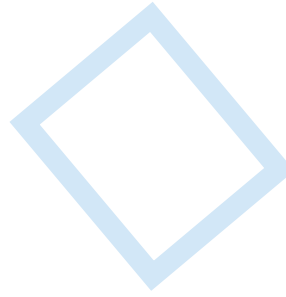
Research and Analysis) provides a good summary of the impacts of tourism on Kenya's environment. The paper states that over 80% of the international tourists visiting Kenya come primarily to view wildlife and enjoy the country's tropical beaches. The typical tourist spends one night in Nairobi on arrival in the country, then takes a two-day safari to view the wildlife and spends the rest of his holiday on the coastal beaches.

The link between biodiversity and tourism is historic and particularly strong in Kenya. The country has 386 protected areas out of which there are 22 National parks, 5 National Marine Parks, 203 Forest Reserves, 5 Biosphere Preserves and 1 Game Reserve (JICA 2002). Although the number of protected areas is large, tourism activities have tended to concentrate on few parks only, causing high congestion. Six out of the country's 57 parks accommodated 70% of all park visitors in 1995 while the top 15 accommodated 96.1% of all visitors. Further a 1973-74 study of Kenya's Amboseli National Park

indicated that 80% of all vehicular movement occurred in 4% of the 390 square kilometer park (Western, 1986). Such concentrated tourism activity and vehicular movement has had a deep impact on the region's biodiversity by causing loss in forest-cover, degradation of grasslands and drastic changes in wildlife behavior patterns. The last of these impacts receives more serious consideration when one understands that the very purpose of establishing national parks was to conserve wildlife. Visitor crowding, off-road driving and pollution within national parks like Amboseli and Maasai Mara has caused behavior changes in leopards¹³ and disturbances in the mating and reproductive cycles of animals. Other tourism-related problems caused in the national parks include scavenging by animals near garbage dumps created by the tourists that could place tourists' lives in peril, landscape degradation from extensive off-road driving, overuse of resources and spread of viruses and bacteria brought by tourists in remote areas. (KIPPRA, 2003).

The Masai Mara National Reserve lies in Narok district of Kenya, South - Western Kenya bordering Serengeti National Park, on the Tanzania border and covering 1510 sq kms. The park was declared a World Heritage Site in 1989 and the original objective was to protect and preserve the region's wildlife. (Bhandari, Medini – Tourism related problems in Maasai Mara National Park, Narok, Kenya 1999) The Maasai Mara Park receives not only the largest number of visitors in Kenya but also in East Africa – around 2,00,000 a year. The number of permanent hotels/lodges increased from 1 in 1965 to 25 in 1997 and the number of vehicles from 2 to 355 in the same period. Damage to the region's wildlife and their habitat has been a combination of increased human presence and pressure and the increased infrastructure activities in the region to support tourism. Resorts, roads and camping facilities on the one hand and poor sewage and garbage disposal practices on the other have a combined disastrous effect on the biodiversity. Interference with the breeding grounds of the zebra and the wildebeest has disrupted migration patterns that used to follow an annual cycle between the Maasai Mara and Serengeti Game Reserves. Encroachments from agriculture, poaching and competition among wildlife together resulted in a 81% and 50% decline in wildebeest and zebra populations respectively between 1977 and 1997 in Maasai Mara. Animal behaviour in the region has been affected to such a large extent that the beasts are now turning to attack the livestock of farmers and ranchers in the neighboring villages. The harmonious co-existence that once characterised the region has been replaced by fear and enmity between man and animal.





Further, with the existing severity in impacts of tourism and a poor domestic regulatory framework, Kenya's commitments under the GATS provide little hope of salvaging the country's biodiversity.

The problems faced by uncontrolled tourism development in the national parks and along the coast have been aggravated by the poor implementation of domestic regulations like the Wildlife Conservation and Management Act. The Kenyan government has recently taken several measures outlined in the National Tourism Master Plan to mitigate the impacts of tourism on the environment and ensure that it develops sustainably. But this cannot be reassuring as policy implementation in the country has been lethargic and one cannot be sure of what the implementation record of this plan will be (KIPPRA 2003).

The nature of environmental impacts prevalent in its protected areas begs the need for an immediate halt to unregulated tourism in Kenya. But the nature of commitments undertaken in the GATS for tourism may not permit such regulation. Kenya has more or less completely liberalised its tourism market by undertaking commitments under all three sub-sectors with no limitations being placed on Market Access or National Treatment under Modes 2 and 3; thereby committing not to limit the number of hotels and restaurants, travel agents and tour operators that operate in all parts of the country, including its protected areas. The consequences of this on its already congested parks and coasts would exacerbate the problem, worsened by poor domestic regulation in the country. Therefore in this case it would not be an overstatement to say that the country's commitments under the GATS will jeopardise conservation attempts and are therefore a grave cause for concern.

Indicator 2 – Depletion of and Access to Natural Resources

Tourism enterprises, like most others, do need to utilise natural resources like land, water and energy. The CSD states that tourism must strive to avoid wastage of resources. Article 3 of the Global Code of Ethics states that those forms of tourism that are conducive to saving rare and precious resources, are to be prioritised. The CBD, in recognition of the rights of local communities over natural resources in the region, states that tourism must be undertaken keeping in mind the land use patterns of the local communities and respecting their access to natural resources in the region. This section analyses the impacts that the GATS might have on resource usage in tourism by considering the examples of two such vital resources – land and water, in the East African context.

The Assessment LAND

As emphasized in the previous chapter, the promotion of nature-based tourism in East African countries had led to the creation of several protected areas, exclusively meant to promote the wildlife interests of the tourists. Little attention has been paid to the fact that these protected areas were once the cultivation and grazing lands of thousands of *Maasai* and other indigenous people whose livelihoods have been sacrificed to sustain the country's tourism industry. Six out of Kenya's and Tanzania's many national parks covering 13,000 square kilometres of what once used to be Maasailand (Survival International). Land is not just a resource but also a symbol of economic and cultural identity of the Maasai people. Says Edward ole Mbarnoti, a Maasai leader, *It is we Maasai who have preserved this priceless heritage in our land. We were sharing it with the wild animals long before the arrival of those who use game only as a means of making money. So please do not tell us that*

we must be pushed off our land for the financial convenience of commercial hunters and hotel-keepers. Nor tell us that we must live only by the rules and regulations of zoologists... If Uhuru (independence) means anything at all, it means that we are to be treated like humans, not animals (Amin, 181).

In its early days, tourism development in the region went along with the assistance and approval of the Maasai whose rights to land and forest resources inside protected areas was recognised. But the situation has changed drastically in recent years. Tourism is now conducted in the region without the participation of indigenous people who have been increasingly displaced by the industry. Increasing pressure of population and expansion of agricultural activities (of the Maasai) even in marginal areas has given rise to a sharp conflict over land use in the region. The farmers and ranchers are in dire need of the land and water resources that are currently diverted towards the protected areas, within which they have no access rights. Continuous threat to their harvests and livestock from the wild animals is another constant worry. To them, wildlife is another competitor and enemy that exploits ranch resources and threatens their survival (Bhaduri, 1999). This increasing human-wildlife conflict is a growing dilemma in these countries and will have to be sorted out judiciously so that the sustainability of human and animal life is ensured.

Ensuring basic land rights to local communities is going to get complicated and difficult with the opening-up of the tourism market through the GATS. Access to land is directly affected by Mode 3 commitments under the GATS, which permit foreign investors to set up a commercial enterprise in the territory of another country. By placing no limitations on this market access right of foreign enterprises,

the government might not be able to ensure basic access rights of its own people to the land. For instance, if the domestic government chooses to prohibit the setting up of a foreign tourism enterprise in any region of the country as it might displace the local populace, such a decision is liable to be challenged at the WTO for violating GATS commitments that do not limit market access. Tanzania has done better by permitting only four-star and higher category of hotels to invest commercially in its territory and also making acquisition of land by foreign investors subject to approval. But even this might be currently insufficient, keeping in mind the European Union's specific request to Tanzania to extensively commit in other sub-sectors under Modes 2 and 3.

WATER

The situation of access to water is precarious in Africa, to say the least. The current water situation in the three countries is worrisome and the status seems to be worst in Kenya. The average Kenyan receives 647 cubic metres of water every year, much below that of neighbouring Tanzania where the average person receives 3000 cubic metres and the average Ugandan 2000 cubic metres of water per year (Kreimeyer, 2004). Kenya's statistic is also below the international standard of 1000 cubic metres of water per year; the UNDP's (United National Development Programme) Human Development Index states that only 47% of the country's population has access to safe drinking water.

There are two important ways in which the tourism industry has intensified the water crisis in the region. Firstly, tourism establishments that are located near sources of fresh water like Lake Victoria, Lake Nakuru and Lake Tanganyika, due to poor sewage disposal mechanisms are responsible for polluting the water. Secondly, the tourism industry consumes

"Nairobi is a city of chronic water shortages, a city where water is commercialized, and there are people being paid to sell huge plastic jugs (larger than 25 gallons) of water to those who need it" (A Tourist to Kenya)

No satisfactory justification can be provided for this kind of resource wastage.

The water situation in this region is complicated by the dominant role played by International Financial Institutions like the World Bank and International Monetary Fund in the water sector. The water sector has been a focus of IFI (International Financial Institutions) intervention in all of Africa for a long time now and a large number of loans have been extended towards water distribution and privatisation. In 2004, the International Development Agency, the lending wing of the World Bank has sanctioned a US \$ 203 million loan for the Nairobi Water and Sewage Institutional Restructuring Project (World Bank, 2004). If not directly, then the demand to intensively privatise the region's water resources comes in the form of conditionalities as is the case of Tanzania where, the privatisation of the Dar-es-Salaam Water and Sewerage Authority was laid down by the World Bank as an explicit condition, if the country was to avail of its HIPC (Heavily Indebted Poor Countries) debt relief (Yellow Times, 2004)¹⁴.


reckless amounts of water by providing tourists with 24-hour water facility and swimming pools when the rest of the country is parched. It is estimated that the average tourist in Kenya consumes four times more water daily than a local person.

The existing perilous water situation in the region and IFI-initiated privatisation drive has been heightened by explicit requests made to these countries to undertake commitments under Environmental Services within the GATS. The European Union, in its GATS requests to developing countries (that were leaked by a Canadian NGO in 2002), clearly asks of Kenya and Tanzania, commitments under Modes 3 and 4 for water collection, purification and distribution, wastewater management, refuse disposal mechanisms and purification of water.

Within the GATS, countries can take initiatives to conserve precious resources like water or energy only by explicitly limiting the number of service providers permitted to operate in the regions experiencing resource shortages. Kenya's GATS commitments under tourism do not do this and requests to undertake extensive commitments under Environmental Services are an invitation to the corporate lobbies of Europe to corporatise regional water resources. This explains why, while examining the impacts of the GATS, the scope of analysis must be widened to consider commitments made under other service sectors (like environmental services) and other institutional mechanisms like IFIs operating in the region.

Indicator 3 – Pollution and Waste Generation

The once-held perception that tourism is an environmentally benign and is a 'smokeless' industry is fast fading. Among the adverse impacts that tourism can have on the environment, the Convention on Biological Diversity makes definite mention of deterioration in water quality, generation and disposal of sewage and waste water, chemical wastes, solid wastes,



greenhouse gases and noise; accordingly, it lists out steps to be taken by the industry and government in mitigating these impacts. This indicator measures the specific impact that tourism activities have on the environment through air, water and noise pollution.

The Assessment

Pollution within protected areas due to the poor waste management mechanisms of hotels and resorts has resulted in considerable loss to the environment. For example, none of the hotels located within national parks have proper mechanisms to dispose generator oil. In another instance, raw sewage directed into Lake Nakuru, from the Nakuru National Park has resulted in the death of flamingos due to substantial damage to the water quality (KIPPRA, 2003).

The coastal belts of Kenya and Tanzania, where beach tourism flourishes, are strong evidence of the high level of water pollution in this region that is directly attributable to the tourism industry. In Kenya, the coastal towns of Malindi, Watamu and Diani located in the district of Mombasa are the most popular coastal destinations while in Tanzania it is the island of Zanzibar. Mombasa district, which houses all three Kenyan towns, has a total of 7600 beds from all the beach hotels located there. Dumping of wastes directly into the ocean by hotels has resulted in the disappearance of active corals even in a place like Diani, which is regulated (KIPPRA, 2003). Water pollution statistics attributable directly to the hotel industry indicate the following degree of effluent disposal –

- Biological Oxygen Demands – 100 tonnes/year
- Suspended Solids – 85.4 tonnes a year
- Nitrogen – 17.5 tonnes per year
- Phosphorous – 21.1 tonnes per year

To cope with this growing threat, the government of Kenya proposes to come out with Water Bill 2000 that would make polluting industries accountable for the damage caused and liable to pay compensation. The Act would also force large hotels to compulsorily set up sewage treatment plants and have their environment impact assessment conducted by a government agency instead of a private consultant.

“Every cruise ship produces per person per day, 1 kilo of burnable waste, 5 kilos of food waste and 1 kilo of glass and tin”
(Uebersax, 1996.)

These steps to strengthen domestic regulation are a necessity for regulating tourism activities, irrespective of the GATS. Kenya’s current nature of commitments makes it difficult to interpret how the country’s trading partners and the WTO will receive

the proposed Water Act. If the provisions of the Act restrict activities of hotels by placing zonal restrictions or forcing all beach hotels to set up recycling equipment, such rules might be interpreted as being unduly trade restrictive by the disciplines of the Council on Domestic Regulation and could be challenged. Additionally, governments must recognise that the GATS is committed to progressively liberalising and deregulating trade in services and so the pressure to do away with all regulation is constantly present. Therefore countries must negotiate cautiously to ensure that domestic regulations to safeguard the environment that have been put in place have not been invalidated by their commitments under the GATS.

The Special Case of the Caribbean Cruise Tourism Industry

There is now growing evidence to support the fact that alongside the Caribbean's growing cruise ship industry is the problem of unsightly and hazardous pollution mounting on sea floors, in harbours and in coastal areas. Most pollution occurs because of the legal and illegal dumping of waste by ships into ocean waters, which are then carried by strong winds to the shores of the islands. In a smaller portion but equally harmful is the pollution that ships cause at harbours and coastal areas while docked. International cruise ship pollution is governed by the MARPOL (Marine Pollution by Dumping of Wastes and other Matter Protocol) while ocean dumping of waste is controlled by the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Materials that permits ships to dump shredded glass and tin and treated food waste into the oceans. But although most cruises are registered in countries that are signatories to these international conventions, few ships actually have installed the technology to treat their wastes aboard before dumping them into the sea. Another interesting point to note is that even though governments are aware of the magnitude of the problem, most Caribbean countries themselves are not signatories to these conventions. This is because the attempt to clean up the ocean has also put extra strain on the land-based facilities of islands, and countries are aware that signing MARPOL would oblige them to set up waste disposal mechanisms on land to treat the wastes brought in by ships (Robertson). In parallel, Cruise ships can mitigate the problem by following a 'Zero Discharge' policy, but most are hesitant to execute this as this would involve losing out valuable room space on board the ship to install treatment plants. The cruise ship industry is also clear that even if it makes financial contributions towards waste disposal mechanisms on shore, there would be no commitment for the inevitable transportation to and management of landfills, or technical support to deal with other waste management concerns.

Regulating cruise ship pollution is further impeded by the ambiguity concerning the registration of many liners. This complicates matters as many cruise ships choose to register or flag their ships outside their country of origin in order to take advantage of tax incentives and cheaper labour for their crew (CRNM, 2003). Such ambiguity over registration makes penalisation difficult in cases where the law has held the ships guilty of polluting waters¹⁵. Therefore although the ability of governments to deal with cruise pollution is hampered by many factors, countries must remember that they do have the option of controlling cruise ship activities in their waters by placing limitations under Maritime Services in their GATS commitments. Listed below are the different toxic effluents normally released by cruise ships:

- Photo processing waste including x-ray fluid – a hazardous waste*
- Dry cleaning waste fluids – chlorinated solvents, lint etc classified as hazardous*
- Print ship waste fluids*
 - Photocopying and laser printer cartridges*
 - Unused and outdated pharmaceuticals*
 - Florescent and mercury vapour lamp bulbs*
- Batteries – lead, alkaline, nickel-cadmium, lithium, alkaline*
- Bilge and oily water residue*
- Glass, cardboard, aluminium, steel cans*
- Incinerator ash*
- Wastewater reclamation systems effluent*
- Graywater discharge*
- Blackwater wastes*

This section focuses on the social impacts of tourism prevalent in two developing countries – Brazil and Mexico. The choice of these two countries is deliberate because in both, tourism plays a less significant economic role as indicated by low shares in National GDP (7% in Brazil and 9.4% in Mexico) (WTTC, 2004). But a low economic position does not translate into low impacts, as the experience of these case studies highlights. When analysing the social impacts of tourism, it is difficult to make direct linkages with sector specific commitments made under tourism and the limitations placed, as the entire instrument of the GATS, by construction does not accommodate these social concerns. Therefore the objective of this section is to bring to light the serious social issues involving tourism development in Brazil and Mexico and stress that most of these cannot be addressed by the GATS in its current framework. The processes behind how society comes to be impacted in an adverse way are complex and influenced by a multitude of factors. Therefore in analysing the impacts of liberalisation, this case study has widened its scope to address other international processes affecting the social milieu as well.

Status of liberalisation in Brazil and Mexico

In its 1995 schedule of commitments, Mexico has opened up nine sub sectors within tourism services for negotiations under the GATS. The noticeable trend is that the country has left both Market Access and National Treatment under Modes 1 and 4 unbound while completely opening up Mode 2 and placing few limitations such as limits on equity ownership and approval from the requisite authorities as Market Access Limitations under Mode 3. Other international trade instruments

“The lion’s share of Mexican trade is now governed by the preferential rules of free-trade agreements (FTAs).” (The WTO)

affecting sustainability need to be analysed here. The NAFTA (North American Free Trade Area) gives unprecedented advantages to service providers

in the United States and Canada in their access to Mexican markets. The WTO’s Trade Policy Review for Mexico states that foreign trade of the country continues to be dominated by NAFTA with its partners – the United States and Canada accounting for the lion’s share of imports and exports. The proposed FTAA (Free Trade Area of the Americas) would expand this domain to include the whole of the Western Hemisphere.

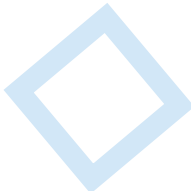
Brazil has been a little more cautious in the commitments made under tourism services. It has opened up only two sub sectors (hotels and restaurants). It has not made any commitments under Modes 1,2 and 4 and has opened up trade under Mode 3 with a national treatment limitation that favours Brazilian firms regarding tax concessions and other sops extended to the industry. But the pressure to undertake further commitments in clearly mounting. The European Union in 2002 requested the Brazilian government to extend its commitments under tourism services to include other sectors – notably travel agencies and tour operators and even to do away with the provision giving Brazilian service providers comparative advantages under Mode 3. In a measure that could be interpreted as buckling to international

pressure, the new offer made by the Brazilian government to the WTO Services Council in July 2004 has expanded Market Access significantly, especially under Mode 3, in travel agencies and tour operators –

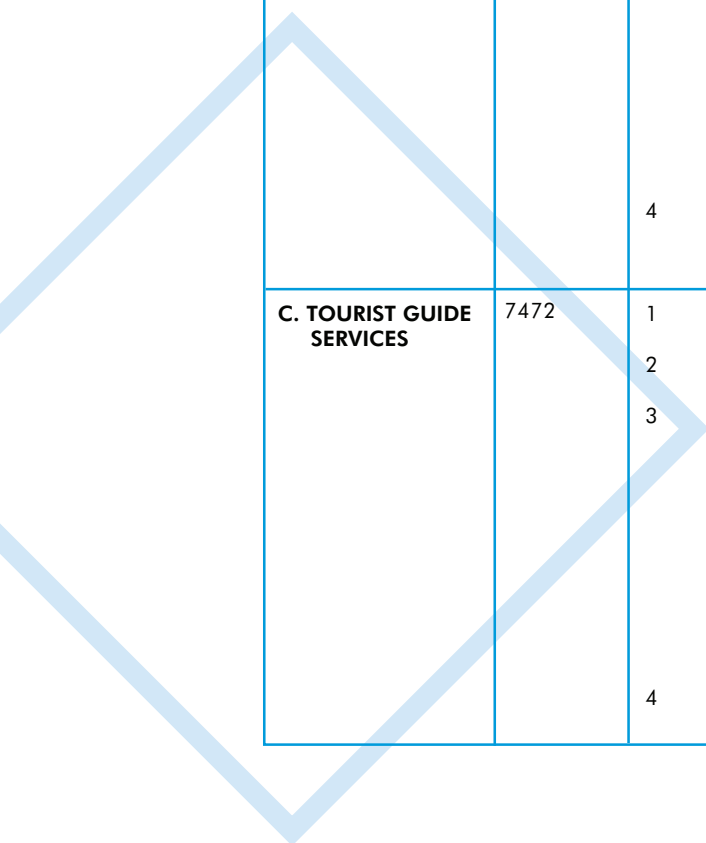
two hitherto unopened sectors. It further makes the important point that this offer by Brazil is conditional on other WTO members making satisfactory offers on other areas including agriculture. This statement only goes to confirm

Mexico's Sector-Specific Commitments under Tourism Services

Sub-Sector	Central Product Classification Code	Mode of Supply	Limitations on Market Access	Limitations on National Treatment
A. HOTELS and RESTAURANTS		1	Unbound	Unbound
◆ Hotels	6411	2	None	None
◆ Motels	6412	3	Foreign Investment up to 100% of the registered capital of enterprises. It is necessary to hold a licence issued by the ministry of Tourism (SECTUR) and a permit to engage in the activity from the competent authority (Federal, State or Municipal)	None
◆ Board and Lodging in guest houses and furnished accommodation	64192 and 64193			
◆ Youth hostels and temporary camping facilities	64194			
◆ Camping facilities for mobile phones (trailer packs)	64195	4	Unbound except as indicated in the horizontal section	Unbound except as indicated in the horizontal section
◆ Restaurants	642	1	None	None
		2	None	None
		3	Foreign Investment up to 100% of the registered capital of enterprises. It is necessary to hold a licence issued by the ministry of Tourism (SECTUR) and a permit to engage in the activity from the competent authority (Federal, State or Municipal)	None
		4	Unbound except as indicated in the horizontal section	Unbound except as indicated in the horizontal section



Sub-Sector	Central Product Classification Code	Mode of Supply	Limitations on Market Access	Limitations on National Treatment
<ul style="list-style-type: none"> ◆ Cabarets and Night Clubs ◆ Canteens, Bars and Taverns 	6432	1	Unbound	Unbound
		2	None	None
	6431	3	Foreign Investment up to 100% of the registered capital of enterprises. It is necessary to hold a licence issued by the ministry of Tourism (SECTUR) and a permit to engage in the activity from the competent authority (Federal, State or Municipal)	None
		4	Unbound except as indicated in the horizontal section	Unbound except as indicated in the horizontal section
B. TRAVEL AGENCIES and TOUR OPERATORS	7471	1	Unbound	Unbound
		2	None	None
		3	Foreign Investment up to 100% of the registered capital of enterprises. It is necessary to hold a licence issued by the ministry of Tourism (SECTUR) and a permit to engage in the activity from the competent authority (Federal, State or Municipal)	None
		4	Unbound except as indicated in the horizontal section	Unbound except as indicated in the horizontal section
C. TOURIST GUIDE SERVICES	7472	1	Unbound	Unbound
		2	None	None
		3	Foreign Investment up to 100% of the registered capital of enterprises. It is necessary to hold a licence issued by the ministry of Tourism (SECTUR) and a permit to engage in the activity from the competent authority (Federal, State or Municipal)	None
		4	Unbound except as indicated in the horizontal section	Unbound except as indicated in the horizontal section



the point that often governments liberalise perceptibly harmless sectors like tourism in exchange for keeping other sectors like agriculture, relatively more protected.

In an important statement, the President of the United States Coalition of Services Industries recently made a statement expressing the perceived benefits of services liberalisation to the Brazilian economy. It reads *"It is very much in Brazil's interest that the WTO services and agriculture negotiations succeed...Services trade*

liberalisation first and foremost benefits the liberalising country...They mean a better standard of living for Brazilians...the US will seek to negotiate as much liberalisation in services trade as possible." Liberalisation of services in Brazil is currently progressing through four fora – within MERCOSUR, between MERCOSUR and the EU, in the Free Trade Area of the Americas and through the WTO-GATS framework; all of which need to be kept in cognisance while understanding impacts of services liberalisation on sustainable tourism.

Brazil's Sector-Specific Commitments under Tourism Services

Sub-Sector	Central Product Classification Code	Mode of Supply	Limitations on Market Access	Limitations on National Treatment
Hotels	641	1	Unbound	Unbound
		2	Unbound	Unbound
		3	None	Brazilian firms operating in the Amazon and Northeastern regions benefit from certain tax incentives. Other incentives are limited to firms with majority of capital held by Brazilian citizens or legal entities.
		4	Unbound except as indicated in the horizontal section	Unbound except as indicated in the horizontal section
Restaurants	642	1	Unbound	Unbound
		2	Unbound	Unbound
		3	None	Brazilian firms operating in the Amazon and Northeastern regions benefit from certain tax incentives. Other incentives are limited to firms with majority of capital held by Brazilian citizens or legal entities.
		4	Unbound except as indicated in the horizontal section	Unbound except as indicated in the horizontal section

Indicator 1 – Indigenous People

Article 5 of the WTO-OMT Global Code of Ethics states that local populations should be associated with tourism activities and share equitably in the economic, social and cultural benefits they generate, benefit from the direct and indirect jobs created by it and that tourism policies should be oriented towards improving their standard of living. The need for tourism to be sensitive to the economic, social and cultural climate of the region is echoed in the CSD Sustainable Tourism Principles that urges governments to advance tourism with appropriate consultation with indigenous groups at all stages including the policy formulating stage, undertake capacity building works with local communities to ensure their active participation and to maximize the benefits of tourism to local communities by developing strategies to eradicate poverty.

The need to stress the role that indigenous people must play in tourism development arises from the variety of ways in which tourism activities affect the lives and livelihoods of host communities. Firstly, tourism intrudes into regions and territories that have been inhabited for centuries by indigenous people; secondly tourism development utilises resources including land, water, forests and other environmental resources over which indigenous people have customary rights as against the user rights enjoyed by the tourism industry; thirdly indigenous people by virtue of their being native inhabitants of these regions are the first and most deeply impacted by adverse environmental and social impacts of tourism development. It is therefore imperative not only that tourism develops in a manner that is sensitive to the environmental and social milieu of the region but that the rights of communities to actively participate in tourism development and be consulted by governments and the industry regarding all tourism activities and plans, be recognized and respected.

Tourism impacts the economic, social, cultural, environmental and institutional aspects of indigenous lives and its impacts in the worst form have come to include denial of access to basic resources, cultural contamination, grave health hazards and human rights violations.

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Mexico has 60 distinct indigenous groups who constitute 8% of the total population (Government of Mexico, 2004). While many aspects of indigenous culture are celebrated in contemporary Mexico, the reality of the indigenous people remains one of political, economic and cultural marginalisation. The United Nations recently estimated that 81% of Mexico's indigenous people live in abject poverty as against 18% of the non-indigenous population. The regions with the largest indigenous populations are the southern states of Chiapas, Oaxaca and the coastal province of Quintana Roo. These are also the states which register high tourism activity in Mexico – the southern states of Oaxaca, Chiapas and Guerrero alone contribute US \$ 4.5 billion to the national economy and employ 2, 45,000 directly and indirectly (Kato, 2004). The benefits that trickle down to the poverty-stricken indigenous population is however negligible.

The Oaxaca Declaration of the *International Forum on Indigenous Tourism* is a clear statement of how tourism development has affected the lives of indigenous people through environmental degradation and cultural erosion. The specific context of the Declaration was to reject the United Nation's initiative of declaring the year 2002 as the 'International Year of Ecotourism (IYE)' as its discussions and processes were conducted without the informed participation of indigenous people. The Declaration stresses the clear divide that has arisen in the process drawing up to the IYE - between actors who want to promote ecotourism and worldwide movements of

"We consider illegitimate any drafting process that does not include the active and full participation of Indigenous Peoples."

(Declaration of The International Forum on Indigenous Tourism, Oaxaca , Mexico, 2002)

indigenous people, which are rejecting it. The Declaration concludes with ten points affirmed by the groups, all of which clearly express that indigenous people are not objects of tourism development and not even merely 'stakeholders' but internationally recognised holders of collective and human rights.

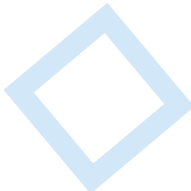
Processes of globalisation exacerbate such problems directly and indirectly. The International Cancun Declaration of Indigenous People made at the 5th Ministerial Conference of the WTO in September 2003 states *"With the creation of the World Trade Organization (WTO) and with the continuing imposition of the structural adjustment policies of the World Bank and International Monetary Fund, our situation, as Indigenous Peoples, has turned from bad to worse. Corporations are given more rights and privileges at the expense of our rights."* Among the instruments of the trade liberalization that have resulted in these violations, explicit mention has been made of –

- Loss of livelihoods of indigenous people in Mexico as a result of dumping of artificial, cheap and highly subsidized corn by the U.S. and the problems caused by the contamination of indigenous corn by genetically modified corn; a result of trade liberalization in agriculture initiated by the North American Free Trade Agreement and continued by the WTO's Agreement on Agriculture.

- The militarisation and environmental devastation in these communities due to the operations of exploitative industries like oil and gas mining spearheaded by transnational corporations, a process facilitated by liberalization of investment norms through the TRIMS, WB and IMF conditionalities and Regional Trade Agreements on the lines of NAFTA.
- The patenting of medicinal plants and herbs nurtured and used by indigenous people, facilitated by the TRIPS Agreement.
- Privatization of basic services like water and health services by the GATS, the scope of which has now expanded to include environmental services, tourism and financial services.

One of the main points of action that governments were urged to take was to prevent the expansion of the GATS agreement and to stop privatisation of services including tourism which has now been monopolised by international and national travel and tour agencies.

Understanding the impacts of liberalization on tourism and through it on indigenous people is complex and involves direct and indirect processes. While directly, tourism liberalisation might exacerbate existing problems of displacement and denial of access to resources, indirectly liberalisation of other sectors, primarily agriculture has made traditional occupations unsustainable thereby forcing indigenous people to become increasingly dependent on tourism as a source of livelihood. This chance to gain economically from tourism is then curtailed by privatisation in tourism and financial services that promote corporatisation of tourism services which brings negligible gains to indigenous people. It is questionable to what extent the GATS or any other instrument of the WTO is capable of addressing the specific concerns that globalisation raises for



indigenous people. The very fact that they are not consulted in the negotiations of the WTO that seek to establish a global trade order indicates that there is little to hope for in this regard. Keeping these impacts in mind national governments must strive to ensure that commitments for tourism, as of all other sectors are arrived at only after thorough consultation with and the due consent of indigenous people.

Indicator 2 – Impacts on Children

Article 2 of the WTO's Global Code of Ethics for Tourism states that tourism activities must promote the individual rights of the most vulnerable groups, notably children. It also strongly condemns the exploitation of human beings in any manner, particularly sexual and calls upon both visited countries and the countries of the perpetrators of these acts to combat such exploitation by strong penalisation through national legislation. This is reflected in the CSD's sustainable tourism principles that also urge governments to take action against abusive and exploitative forms of tourism by developing appropriate legislations. It additionally calls upon the tourism industry to refrain from illegal, abusive and exploitative forms of tourism.

Like in all other industries and activities, child labour in tourism related activities is a cause for concern. But unlike other industries, tourism additionally exposes children employed in service provision to physical and sexual abuse by placing them in vulnerable positions forcing the International Labour Organization to identify employment in the tourism industry as one of 'The Worst Forms of Child Labour'. Child abuse in the tourism industry can include sexual and non-sexual abuse. The former is visible through the growing problem of child prostitution in popular tourist destinations that is aggravated by the rampant trafficking of children for sexual and non-sexual purposes across the globe.

The Assessment

Brazil has one of the worst records for child labour in the world. The International Labour Organisation's 'Worst Forms of Child Labour Data' states that Brazil has more than 2.9 million economically active children below the age of 15 of which 5,83,00 are between the ages of 5-9. Research also indicates that around 1.5 million children less than 10 years old who work in different forms of employment receive half of the stipulated minimum wage while working an average of 48 hours per week¹⁶ (ILO, 1999). In this current situation of child labour, a significant role is played by the tourism sector, which accounts for a large share of the country's sex market. Brazil faces one of the worst child prostitution problems in the world and is known to be a favoured destination for paedophile sex tourists from the United States and Europe.

The problem has permeated all regions of the country. In the cities along the northeast coast, sex tourism exploiting children involves a network of travel agents, hotel workers, taxi drivers, and others who actively recruit children, and even traffick them outside the country. In the northern Amazonian region, sexual exploitation of children centres on brothels that cater to mining settlements. The practice is also prevalent in smaller towns such as Coxim where tourists staying in fishing encampments hire young girls. Several raids conducted by the Brazilian police to crackdown on brothels revealed startling results. In Porto Murtinho, a town of 11,000 people, six locations of prostitution were found while in Coruma with a population of 878,000, 16 prostitution establishments were found. Campo Grande with a population of 600,000 people there are around 12 prostitution establishments where over 100 young girls from Sao Paulo, Goias, Parana, Minas Gerais, Paraguay and Chile are employed in sex tourism (CATW, 2000).

The problem of child prostitution is aggravated by the fact that Brazil has come to be a prime source and destination point for children being trafficked to serve the burgeoning sex tourism market.

“ One million children are involved in the Brazilian multi-billion dollar sex market”(ILO, 1999)

tourist centres being among those areas with the highest number. Monitoring cross border trafficking between Mexico and the United States by child rights advocacy groups has brought to light the fact that in many cases the impetus to travel to Mexican coasts includes child abuse and providing drugs to the local children (Hemisphere Focus 2004).

The rise and spread of social problems like child prostitution cannot be attributed to one factor alone as they are the result of the interplay of deteriorating economic, social and cultural systems. In Brazil, rising prostitution among children is one of the outcomes of the severe economic crisis that the country faced in the last decade, which forced children and adults alike to take on prostitution as a means of survival. Similarly in Mexico, which has 40% of its population under the poverty line, poor economic prospects make women and children susceptible to trafficking in the hope of a better economic future.

Indicator 3 – Cultural Aspects

The impacts of tourism on culture can be both positive – through fostering an exchange of cultures and cultural enhancement or negative through commodification of culture, standardisation, deterioration in traditional

The difference is one of degree and not of kind in Mexico where a UNICEF fact sheet estimates 16,000 children, exploited in prostitution in the country, with

systems and loss of cultural identity. The nature of tourism is such that it gives the tourist the opportunity to be transported into an alien socio-cultural ambience and a chance to appreciate the unique culture, traditional lifestyles and tangible and intangible cultural heritage of the region. But if not sensitive and respectful of the sentiments and cultural values of the local people, tourists can come to be viewed as an unwelcome guests. The WTO Global Code of Ethics has devoted an entire article to stressing that tourism is a user of cultural heritage and a contributor to its enhancement. It recognizes that cultural resources used by the tourist belong to entire mankind but that communities in whose territories they are situated have particular rights and obligations, that governments and the industry must endeavor to protect and preserve tangible heritage and that tourism must permit cultures to flourish rather than get standardised and die out. The CSD directs governments to ensure that tourists behave responsibly by respecting cultural values and social norms.

The International Cultural Tourism Charter developed by ICOMOS (International Council on Monuments and Sites) and adopted by the UNESCO, states that tourism should bring benefits to host communities and provide an important means and motivation for them to care for and maintain their heritage and cultural practices. The involvement and co-operation of indigenous community representatives, conservationists, tourism operators, property owners, policy makers, those preparing national development plans and site managers is necessary to achieve a sustainable tourism industry and protect heritage resources for future generations.

The Assessment

Culture is an important element of the attractions that Mexico has to offer to

its tourists. Mexico has 24 sites identified by the UNESCO in their World Heritage List as exclusive embodiment of mankind's tangible heritage. Visitors (especially large group-tours organised by commercial operators or educational/social institutions) flock to the ancient sites and cities of Palenque, Uxmal, Chichen Itza, Tulum and Teotihuacan in large numbers to experience pre-Colombian cultures in their entirety.

While many of these excursions are successful experiences and contribute to enriching popular understanding of the region's rich heritage, such an appreciation has come without the significant participation of local communities whose culture and tradition is embodied in these archaeological sites and monuments. The National Institute of Anthropology and History (INAH) of Mexico, which is responsible for managing these monuments and archaeological sites, is unable to develop any effective links with the surrounding communities. As a result there are frequent conflicts between the demands for protecting the historical and cultural heritage on the one hand and those of merchants and residents on the other who are keen on investing in these regions for profit. For the same reasons, local NGOs vociferously opposed a new tourism project that was jointly proposed by the Mexican government and the Inter-American Development Bank in Chihuahua's Sierra Tarahumara – a hitherto obscure little town that is home to several culturally distinct indigenous groups: Pima, Wario, Odame, and Raramuri. The activists argued that the project was fundamentally flawed as indigenous residents had not been consulted as beneficiaries but rather as objects of tourism and as vendors of handicrafts and folklore. Promoters, in fact, argued that it was necessary to 'maintain' the local population as a living museum of Chihuahua (Borderlines, November 1997).

Additionally, the National Tourism Policy of Mexico has stated that to divert attention away from its congested beaches, the government is going to promote new forms of tourism like rural tourism, adventure, archaeological and cultural tourism. In its promotion of cultural tourism, every government must consciously weigh the right of the tourist to experience other cultures and tangible embodiments of culture against the rights of local communities to cultural preservation and self-determination. Ultimately, it must be realised that tourism development can be an active instrument for cultural enhancement and exchanged if, and only if, it is conducted with the participation of local communities.

In the context of tourism services, the GATS can do little to accommodate concerns of cultural preservation as it views tourism through the narrow lens of economic profit. But the GATS has a direct link to cultural resources as its scope includes trade in cultural services as well. The Coalition for Cultural Diversity stresses that cultural policies of countries and communities must not be subjected to the constraints of international trade agreements including the GATS and regional trade agreements like the FTAA. It is appropriate to quote the mission and stand of the Coalition for Cultural Diversity here –

“cultural diversity is a fundamental right and that countries should assure its preservation and promotion....that countries and governments be entirely free to adopt the policies necessary to support the diversity of cultural expression and the viability of enterprises that produce and disseminate this expression; that international trade agreements fully respect these policies; that the application of such policies not be subject to reprisals... that until this new international instrument is implemented, countries refrain from taking trade liberalization commitments that would impact the cultural

sector, whether in the context of negotiations within the WTO or within any other international trade negotiations.”

Indicator 4 – Impact on Women

Tourism impacts women in diverse ways and is reflective of the larger economic, social, political and cultural roles played by them in society. Prostitution and sex tourism are some of the directly visible forms of exploitation of women by the tourism industry, which have been condemned in both the WTO Global Code of Ethics and the CSD Sustainable Tourism principles. A gender bias also persists in the industry with regard to women employed in service provision who are discriminated against either through wage differentials or plainly in terms of the type of employment they have access to. In recognition of this, Article 2 of the Global Code of Ethics states that tourism activities should respect the equality of men and women.

Tourism impacts women in 5 different ways: –

- formal employment in the sector (usually they are at the bottom of the social hierarchy),
- informal activities (handicrafts),
- social and economic status ,
- sex exploitation
- women’s influence on decision-making around tourism development issues.

The Assessment

The problem of sexual abuse and exploitation of women as part of tourism, is a malady that few countries are free from. As a destination point for tourists, Latin America serves as a haven for sexual tourism and as a source point, women are regularly trafficked from Brazil, Mexico and the Caribbean to serve in the European sex market (Global Programme Against Trafficking of Human Being, 2002). An effect attributable to this is the portrayal of women as objects of sexual desire by both travel agents and tour operators in the tourist

generating and tourist receiving countries. For instance the basic cliché attached to Brazilian women is that they are patient and erotic; such eroticism, when combined with the hot and enervating climate of the country and the exuberance of nature and tropical songs presents a desirable picture to sex tourists. Such a perception is spread with the aid of technology. An example of this is sex tourism between the US and Mexico where web-based sex tour promotions offer airfare, hotels and directions for Mexican brothels, particularly in the border regions and major tourist centers (Hemisphere Focus, 2004). In deed, Tijuana was the primary destination cited by sexual tourists in one study that found a total of 40 websites dedicated to ‘promoting Mexico as a destination for erotic vacations and Sexual Tourism’.

Trade policies in general are considered to be gender, class and race neutral. But it is important to understand that although they might be neutral in tone, the impacts of trade liberalisation affect different groups differently and the same argument applies to women as well. For example, liberalisation of the sector might impact women more severely than men as in many of these economies, women constitute the majority of the small farmers and their access to credit, technical know-how and technology is far less than that of men. Understanding the GATS and how it impacts women becomes crucial as service industries continue to be the highest employer of women worldwide (Gavidia, 2003). Not only are women likely to be hit first when employment drops, but are also the first to be impacted by reduced access to public services like water and health, which are under threat of getting privatised and corporatised through the GATS. Therefore it is important to understand that gender-based demarcations, either in employment or in power relations or decision-making concerning tourism development would undermine the well-being of women, men and children.

GATS[□] INSTITUTIONAL IMPACTS[□]

This section analyses the complex institutional framework within which tourism functions using the case study of India, and the complications that arise when the GATS is superimposed on this existing framework. It hopes to stress that with or without the GATS, the strengthening of institutional capacity and the regulatory regime is a prerequisite to ensuring sustainable tourism practices in any country.

The Indian Services sector recorded an annual average growth rate of 9% during the 1990s and services exports during the same period grew two and a half times faster than the domestically focused services sector (World Bank, 2004)¹⁷. While a large part of this growth is attributable to the information technology and business process outsourcing sectors, other sectors like telecommunications, financial services and hotels and restaurants have also grown remarkably in this decade.

This unprecedented boom in the country's services sectors has prompted policy makers to take a closer look at the process of liberalising global services trade and arrive at informed and sound strategies on presenting the country's interests at the negotiating table. Worldwide, tourism remains comparatively more liberalized than other services sectors and faces only few explicit barriers. While this might encourage negotiators to pursue further liberalization, there is growing acknowledgement of the fact that the current institutional and regulatory framework in the country is inadequate to be able to cope with such an opening of markets.

India's commitments in the GATS relating to the tourism industry relate primarily to four sub sectors in the W/120; Hotels and Restaurants, Travel Agencies and Tour Operators, Tourist Guide Services, and Other. Of these four, the Indian government has made documented

India's vertical commitments in Tourism Sector

Sector	Limitations on Market Access	Limitations on National Treatment
Hotels and Other Lodging Services (CPC Ex.641)	Unbound	Unbound
	Unbound	Unbound
	Only through incorporation with a foreign equity ceiling of 51 percent	None
	Unbound except as indicated in the horizontal section	Unbound except as indicated in the horizontal section
Travel Agency and Tour Operator Services (CPC 747)	Unbound	Unbound
	Unbound	Unbound
	Only through incorporation with a foreign equity ceiling of 51 percent	None
	Unbound except as indicated in the horizontal section	Unbound except as indicated in the horizontal section

commitments on two, the first and second. However, while not documented in the schedule of commitments in the WTO site, it has been concluded by sources closer to the actual negotiations that the other two sub sectors have had commitments made as well. Yet, these are presumably not final, and as a result are not publicly available.

Any assessment of the existing tourism commitments by India will have to be considered within the context of the existing policy environment in the country. Prominent trade policy analysts have concluded that a close analysis of India's commitments in a traditionally liberal and *less sensitive sector* such as tourism shows that India has adopted a highly cautious approach to liberalisation during commitments made during the Uruguay round. But research has shown that such an assessment could be wrong (EQUATIONS, 2002).

Indicator 1 – Constitutional Framework

The Constitution of every country is the law of the land. The existing trade regime is creating new global laws of trade and commerce that may severely impinge the existing Constitutional structure and possibly even override it. Therefore, analysing the impacts of the GATS on the existing Constitutional structure is a first step towards fathoming the institutional impacts of the GATS on any particular sector.

The Assessment

The Constitution of India is a very elaborate and comprehensive document. India's commitments under the GATS have reflected many important principles laid down by the Constitution with respect to development in the country. For instance, India's latest offer under the GATS clearly limits Market Access and National Treatment in all service sectors by stating that these commitments shall not extend to areas included in the Fifth and Sixth

Schedule of the Constitution. These are areas, which; by virtue of their distinct social, economic, environmental features, have been categorised as 'Scheduled Areas' and therefore governed by different administrative structures.

There remain however other overarching issues concerning the implications of the GATS for the Constitutional structure within a country and these are examined below.

The GATS and Local Governance

The principles of Separation of Powers among the different organs of the government and Distribution of Powers between the centre and the states is set out very clearly in the Indian Constitution. The 73rd and 74th Amendments to the Indian Constitution are a statutory recognition of the principle of participatory democracy by facilitating the creation, functioning and empowerment of local self-governing institutions in rural India through 'Panchayats'¹⁸ and in urban India through 'Municipalities' and other urban local bodies. Under 'empowerment of institutions of local government', Article 243-G of the Indian Constitution 'directs the Central and State government machinery to endow Panchayats and Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government.... with respect to –

- The preparation of plans for economic development and social justice
- The implementation of schemes for economic development and social justice in relation to matters listed in the Eleventh Schedule for Panchayats and Twelfth Schedule for all urban local bodies.'

By design, therefore, *Panchayat Raj* is a system of local self-government where communities take the responsibility upon themselves to develop. It is also an institutional arrangement for achieving rural development through

people's initiative and participation and has accordingly been given powers to realise these objectives. With respect to tourism alone, it has been observed that a majority of tourism requirements rely on the 29 subjects vested with the Panchayati Raj Institutions (PRIs). The Panchayats are empowered to safeguard and preserve the traditions, customs and cultural identity of the people, community resources and settling local disputes through customary methods.

Tourism development requires permissions from Panchayats for the following:

- Acquiring land for development projects, and rehabilitation and resettlement of persons affected by of any projects undertaken in Scheduled areas are to be done in consultation with either the Gram Sabha or the Panchayat at the appropriate level
- Regulation of land use and construction of buildings
- Sourcing of water from the region for domestic, industrial and commercial purposes
- Roads, culverts, bridges, ferries, waterways and other means of transport and communication built in the region
- Minor forests produce (community resources) as resources belongs to them and they have acquired natural right over it as a result of staying there for years
- Electrification
- To participate in cultural activities of the indigenous peoples without interfering with their rights

The Rights of the Panchayat are:

- To reject a license if the Tourism industry refuses to cooperate. This derives from the Panchayats duty and right to provide for health and sanitation

- To question if the industry is indulging in exploitation of labour and natural resources
- Initiate criminal procedures if found catering to exploitation of women and children, including child labour
- To levy, collect and appropriate such taxes, duties, tolls and fess
- To be part of the preparation of plans for economic development and social justice.

There are however significant influences that have crippled the ability of Panchayats to function as rural self-governing institutions in India. The success or failure of Panchayat systems depends on its structure, powers, functions, leadership, finances and state control. These are several instances from across the country where tourism establishments and activities have been carried on without the consent of the local Panchayat / Municipality because of the power play of other important lobbies and higher authorities which overrule its decisions. These have often led to serious legal disputes as well. A lack of adequate transfer of powers and resources to Panchayati institutions, inability of Panchayati Raj bodies to generate their own resources through tax on sale of land and non-representation of women and weaker sections in elected bodies are some issues that have handicapped the institutions.

Nonetheless, the country has in place a constitutionally mandated system of local governance and it is this democratic system that the GATS overrides.

Overriding powers of the GATS

A reading of the powers conferred on local governing bodies by the Indian Constitution clearly indicates that they have been empowered to plan and implement a large number of activities related to tourism development, most of which are also basic

services that fall under the GATS classification of 160 service sectors. There is an overlap of powers and it is clear from Article 1 of the GATS, which defines its scope that commitments made under it will override local government decisions.

This Agreement applies to measures by Members affecting trade in services...For the purposes of this agreement "measures by Members" means measures taken by central, regional or local governments and authorities

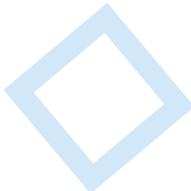
Therefore, the scope and mandate of an international trade agreement like the GATS to progressively liberalise trade in services, including tourism and pressurise governments towards deregulation will impinge on such powers conferred on local governments. In general terms, the ability of central and local government to regulate economic activity in pursuit of social or environmental goals is constrained.

Weakening rather than Strengthening Institutions of Local Governance

It is important to realise that the GATS, like all other WTO instruments, is negotiated by national governments through their trade delegations in Geneva. The existing regime provides no space for local governments at the negotiating table. This system therefore completely bypasses local institutions like Panchayats, which have the right and authority to take informed decisions on the kind of development that they permit and foresee for themselves. There are also serious legal complications that could arise from this clash of jurisdictions. If, for example, the WTO Dispute Settlement Mechanism decides that an Indian municipality's decision is deemed incompatible under the Central government's GATS commitments, would the central government be forced to change locally evolved laws simply because they are WTO incompatible?

One case in point is an ongoing dispute between an amusement park called 'Veegaland Amusement Park' situated at Pallikkara (in the state of Kerala), and the Kunnanthunnadu Grama Panchayat within whose limits the park is situated. The dispute involves the non-payment of entertainment tax by the park authorities to the Panchayat. While the park management argues that the existing legislation does not apply to amusement parks thereby giving no basis for charging the tax by the local body; the Panchayat has argued that it is fully empowered to do so and therefore the non-payment of taxes by the park is an offence. The Panchayat members also argue that the park has not supported local enterprise and that not even one of its 157 permanent staff were from the locality. In lieu of the increasing legal hassles in the case, the Government of Kerala passed an order preventing all Panchayats from spending more than Rs. 3000 on litigation (when the Kunnanthunnadu Grama Panchayat has already spent Rs 1,65,000 on the same). In such a situation of conflict, it is unsure what kind of implications the GATS would have. Had the tourism establishment in question been foreign owned and governed by the GATS, its dispute with a local government would have caused serious complications. Situations such as these would seriously undermine the potency of local government authority and power to regulate tourism establishments in their region.

There is already a campaign that has been initiated within the country to impress upon the national government, the need to recognise the rights of Panchayats and consult them in tourism development and to strengthen the institution of Panchayati Raj by empowering them to become effective decision-makers. The GATS supports neither of these two efforts but in turn undermines them by its undemocratic and non-transparent way of functioning.



These are a few of the crucial questions that governments will have to ask and analyse to grasp the implications of the GATS on local self-governing mechanisms. Local governments are not party to the GATS but are subject to the full impact of the commitments made under it. The implications of the GATS on powers of local governments stresses the need for national governments to arrive at their official GATS negotiating positions through a democratic bottom-up process.

Legislative Powers on Tourism

The GATS has important implications for the legislative and regulatory powers of national, regional and local governments. To understand the nature of these implications it is first important to identify which agency of the government is vested with powers to legislate on matters relating to tourism.

India is a Federal Democracy where the legislative powers are divided between central and state governments. The Constitution permits the Central Legislature /Parliament of the country to legislate on matters enumerated under the 'Union List' of the Seventh Schedule while State Legislatures have the exclusive power to make laws with respect to matters enumerated in the 'State List' of the Seventh Schedule. There is also a third list – the 'Concurrent List' through which the Constitution authorizes both Parliament and the State legislatures to legislate concurrently with respect to the subjects enumerated in the Concurrent List (Article 246 (2)). The rationale behind having a Concurrent list is to allow both parties to legislate on matters that cannot be allocated exclusively to the Central or State legislatures. Article 254 enunciates that in case of conflict between a Union and a State law, the former shall prevail over the latter.

Tourism in the Concurrent List

In India, tourism has not been exclusively listed as a matter of legislation in any of the three lists and this has given rise to significant ambiguity and conflict between various government machineries. Recently, however the national government has articulated its intention to include tourism in the Concurrent List of the Constitution. It is felt that the government's strategy to promote tourism in the country through private sector participation requires that the Central government have a greater hold on the sector. However, given the cultural and geographic diversity of the country, it would not be wise to vest all powers with the Central government by placing it in the Union List. Hence, promoters of the idea argue that making Tourism a part of the Concurrent list would be in the best interest of the country.

With regard to the inclusion of tourism in the Concurrent List of the Constitution, the National Tourism Policy of 2002 states –

This will provide a constitutional recognition to the tourism sector, help in channeling the development of tourism in a systematic manner and enable central government to legislate for tourism development

In a National Consultation of the Chief Ministers of all the states, which was held to debate the issue, a majority accepted the initiative. But seven state governments officially opposed the move while four others are yet to confirm their participation. An examination of the existing format of the Seventh Schedule of the Constitution indicates that implementation of the move is going to be difficult and might add to the existing ambiguity on the subject. In its present format, the sectors currently in the Seventh Schedule, which are related with tourism, include –

Sector	Presence in the Constitution	List in
Transport	Railways, National Highways, National Waterways, Maritime shipping and navigation, Airways, Aircraft, Air Navigation	Union List
	Roads, bridges, ferries, municipal tramways, ropeways, inland waterways and other means of communication not included in Union List	State List
Finances (including taxes)	Taxes on Incomes other than agricultural incomes; Custom and Export duties; Terminal taxes on goods and passengers carried by railways, sea or air	Union List
	Taxes on luxuries, including taxes on entertainment, amusements, betting and gambling; taxes on goods and passengers carried by road or on inland waterways	State List
Health	Public Health and Sanitation	State List
Telecommunications	Union List	
Environmental Services	Prevention of Cruelty to Animals, Forests and Protection of Wildlife & Birds	Concurrent List
Basic Services		
♦ Water		State List
♦ Electricity	Taxes on consumption or sale of electricity	State List
Insurance	Insurance	Union List

As the table indicates there are several important sectors under the umbrella of tourism on which the current legislative power rests with the state – a status that could well be jeopardized if tourism is placed in the Concurrent list – one where the ultimate powers lie with the Central Government. This has been the precise point of apprehension and objection of state governments which are unwilling to give up their existing rights to legislate on vital areas like taxation and basic service provision and is seen as antithetic to participatory and locally-initiated tourism development.

Above all other reasons, the national government's initiative to place tourism in the Concurrent List is motivated by the fact that it is the sole negotiating body with regard to India's commitments under the GATS in the WTO.

It can be seen therefore as a further step towards centralizing, rather than decentralizing powers and processes related to tourism development in the country. Given the already undemocratic, non-consultative process, which characterizes the WTO negotiations, measures like these by national governments, we believe would be undermining the democratic spaces that the Constitution provides for participative development. In such cases therefore it is the influence of the GATS and WTO machinery that is of significance than its impact. If the central government of any country seeks to hold the majority of the legislative powers on tourism matters because it is solely responsible for negotiating on tourism services under the GATS, it is a matter of grave concern for existing democratic and participatory processes in the country.



Indicator 2 : Domestic Policy and Regulatory Framework

There exists in every country, a certain governmental framework for executing the decisions that are taken and administering them in the country. India being a federal structure has both a Union Executive and State Executives in place within which, Ministries at the Union level and Departments at the State level are largely responsible for executing policies and decisions of the government on specific sectors. Foreign Trade including trade negotiations constitute one such specific sector which is the responsibility of one Central Government Ministry alone and which executes its functions and decisions in a closed and non-consultative manner. This section highlights the fact that negotiating on agreements that may pertain to foreign trade but which affect all aspects of domestic life should not remain the function of one government agency alone. For tourism, as for all other sectors, a strong institutional framework capable of coping with the impacts of the GATS can exist only when there is an effective process of coordination and consultation between different organs of the Government.

This section analyses this issue in two parts – the first looks into the structure of executive authority affecting tourism in the country and the need for effective coordination within it. The second examines three important tools used by these authorities to carry out their executive functions – policies, subsidiary institutions and a domestic regulatory framework – their impact and influence on tourism in the country and the need for stronger coordination in the formulation and use of these tools.

The Assessment Executive Authority

In India, it is the Ministry of Commerce and Industry that formulates policies with regard to

international trade and negotiates the official national position on bilateral and multilateral issues regarding trade. The administrative control of the Ministry with regard to the field of Foreign Trade includes –

All matters relating to foreign trade including negotiations and agreements, trade missions and delegations, trade cooperation and promotion and protection of Indian traders abroad

In this capacity, therefore negotiating and committing on the GATS and within it tourism services would also be the executive mandate of this Ministry. However, though tourism negotiation may be the exclusive authority of this Ministry, tourism development is not. There are other important Ministries that exist at the Union level and deeply influence tourism development in the country.

The first of these is the Ministry of Tourism and Culture under which, the Department of Tourism is the apex executive body in the country. Its roles and functions include ¹⁹ –

- Formulating national policies and programmes
- Coordinating and supplementing the efforts of various central government agencies/ state governments
- Catalysing private investment
- Strengthening promotional and marketing efforts
- Developing infrastructure
- Conducting research and analysis

While this is the nodal agency for tourism development, tourism activities fall under the purview of other central-level ministries as well like the Ministry of Environment & Forests which is the directly responsible for the planning, promotion, co-ordination and overseeing of the implementation of environmental and forestry programmes in the country. The principal activities undertaken by Ministry

of Environment & Forests, consist of conservation & survey of flora, fauna, forests and wildlife, prevention & control of pollution, afforestation & regeneration of degraded areas and protection of environment. The Ministry is also the nodal agency in the government for various environment related multilateral conventions and protocols including the Convention on Biological Diversity, The Convention on Climate Change, Kyoto Protocol, Montreal Protocol and handles bilateral and multilateral matters pertaining to international bodies UNEP, CSD and UNDP. These matters might be handled by the technical and scientific divisions of the Ministry, but they are also of grave importance to shaping and guiding tourism in the country, which depends largely on the environment.

In a similar manner, there are several other Ministries that exist at the central-government level itself and have administrative responsibility over specific sectors of the country, but at the same time all of which are responsible for or impacted by tourism development. Formulating a sound strategy for negotiating India's position on tourism services would therefore need coordination between all these government agencies so that tourism is understood holistically and its impacts addressed clearly. Mutual consultancy alone can highlight the conflicting aspects of international negotiating frameworks like the WTO, CBD, CSD and other sustainable development frameworks.

A process of consultation would force other government agencies to ruminate over the potential implications of the GATS and communicate such concerns to the Ministry of Commerce, also making contributions towards the formation of commitment schedules to ensure sustainability of tourism.

While this is the status at the Central Government level, the situations gets

unimaginably more complicated at the level of individual states. In the state of Goa for example, the statutory authorities that regulate issues surrounding environmental quality alone are the Goa State Pollution Control Board (GSPCB), the Industrial Development Corporation (IDC), the Economic Development Corporation (EDC), the Planning and Development Authorities (PDA), the Town and Country Planning Department, the Forest Department, municipalities and the *Panchayats*.

Instruments of Executive Power

There are several instruments through which Government Ministries implement their sector-specific programmes and all of these form part of the complex institutional framework within which tourism in the country functions and develops. This section elaborates on three such important instruments – policies, creation of subordinate institutional bodies and the domestic regulatory framework.

Policies

Every national Ministry has a functional mandate to undertake policy-formulation and implementation in their specific areas of work. But in order to understand the cross-linkages that exist between tourism and other sectors, a close scrutiny is needed of tourism policies and policies of other government agencies that may pertain to the environmental, social or economic dimensions of tourism. Such a cross-sectoral study of policies would also be indicative of the level of coordination that exists between different government agencies on tourism development.

The National Tourism Policy drawn up by the Department of Tourism is the chief document that informs the public about the government's intent, plans for and priorities in the tourism sector. The National Tourism Policy of 2002 has talked of the need for sustainable tourism development without even mentioning the GATS.

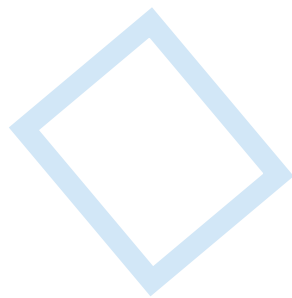
This indicates that the Ministry has overlooked the critical importance and implications of the Agreement for sustainability concerns in tourism. An acknowledgement of GATS in the realm of tourism policy-making is a first step towards spreading awareness about its implications and building institutional support to comprehensively deal with it.

Another important policy document that is of importance is the recently drafted National Environment Policy, brought out by the Ministry of Environment and Forests. The document unfortunately is completely watertight and inward looking and does not take into account existing national and international commitments in the field of sustainable tourism. The policy does not address existing impacts of unplanned and unregulated tourism development on the environment, on the contrary, goes on to propose ecotourism in such areas. A clear example of the lack of coordination between government agencies comes from the fact that the policy mentions integration of environmental and social concerns into development activities but limits the scope of such integration to environmental agencies alone without issuing directives to the Ministry of Tourism or state-level Tourism Departments. The ramifications of such lack of coordination are clearly visible through cases where tourism projects that have been sanctioned by government tourism departments (state-level and national) have violated regulations laid down for environmental sustainability by the Ministry of Environment and Forests. The Indian coastline is replete with instances of 'development projects' and tourism establishments that have blatantly violated the Coastal Regulation Zone Act.²⁰

In a similar manner, the draft National Policy on Tribals prepared by the Ministry of Tribal Affairs, Government of India aims to give a coordinated direction to the efforts of tribal development in the country without even mentioning tourism, which is an important

factor that needs to be taken into account when talking of tribal development. Tourism, across the globe has intruded into territories inhabited for centuries by indigenous people and has thereby had serious social, economic and cultural impacts on their lives. The policy, which delves into issues such as formal education, traditional wisdom, health, land alienation, intellectual property rights and a participatory approach – does so without a single mention of the various WTO instruments like the Agreement on Trade Related Intellectual Property Rights (TRIPS), Agreement on Agriculture (AoA), the General Agreement on Trade in Services (GATS) all of which pose serious threats to these rights possessed by indigenous people. Neither does the Tribal Policy draw from internationally accepted charters and declarations like the Declaration of International Forum of Indigenous People, The International Cancun Declaration of Indigenous People or The International Cultural Tourism Charter that articulates these concerns and directs policy-makers and the industry to manage tourism in a way that respects the heritage and livelihoods of the host communities.

Finally, the Foreign Trade Policy, brought out by the Directorate General of Foreign Trade, Ministry of Commerce and Industry is another important policy to be taken into analysis. The Preamble states that the context of the new policy is to take an integrated approach to the development requirements of India's foreign trade. But it is disheartening to note that the policy details the specifics of all matters relating to exports and imports in the country without addressing the broader framework of the World Trade Organization, which is global in its scope. The Policy outlines several measures for boosting exports including financial assistance,



marketing assistance, branding and quality promotion, branding Star Export Houses, new incentive schemes, expanding Special Economic Zones and creation of Free Trade and Warehousing Zones all of which need to be understood and analysed in the context of the international trading regime. The only mention that the trade policy makes of WTO instruments is in its use of the GATS classification of services to extend the classification to the scope of this policy as well. The policy has clearly indicated the government's intention to create trade enclaves by expanding the existing concept and scope of Special Economic Zones and creating new 'Free Trade and Warehousing Zones'. Many such existing industrial and trade enclaves in the country have been created at great costs to the environment through intensive large-scale development and reckless use of precious resources like land, water and power. The fact that The Foreign Trade Policy has outlined these measures without recognizing measures taken by national and international regulations to mitigate the environmental impacts of such large-scale development is another such indicator of poor consultation and linear thinking.

Creation of Subsidiary Bodies

Creation of apex bodies, autonomous institutions, boards, advisory councils and committees are another popular means that government agencies resort to in carrying out their executive functions. Most of these subsidiary organisations often have their membership limited to bureaucrats or 'experts' and act as apex decision-making bodies or single-window clearing houses for projects and proposals – including those for the tourism sector. For these reasons, it is important to understand which particular bodies/ subsidiary institutions monitor, regulate or promote tourism development

and what powers they have been given.

There are a plethora of such Boards, Agencies and Organisations that govern tourism activity in the country, many of which are centrally empowered and provide for speedy clearance of projects by streamlining procedures and reducing procedural formalities. Procedures that are done away with may be as fundamental as asking local bodies for permission, abiding by certain environmental guidelines or doing an impact assessment of the project, all of which are essential for sustainability. The draft National Environment Policy has echoed this sentiment by indicating that environmental and forest clearances are major causes of delays in development projects and these need to be reviewed. Often such apex bodies, though acting as one-stop clearance houses for large projects, severely constrain local government's authority and power to decide on whether or not they approve of the projects. In this context, it must also be stressed that the GATS supports a system of progressive deregulation where even such procedural requirements could be interpreted as being 'unnecessary barriers to trade'. There is therefore a constant pressure on governments to streamline procedures relating to foreign investment in the country and the creation of such single-window clearing cells only facilitates this process.

In the area of foreign investment, the Foreign Investment Promotion Board (FIPB) is the only agency in the country dealing with all matters relating to foreign direct investment. It is a specially empowered Board in the office of the Prime Minister and includes other important central government representatives like the Finance Secretary, the Industry Secretary, Commerce Secretary and Economic Affairs Secretary. The main function of the Board is to

ensure expeditious clearance of foreign investment projects. India's latest offer to the Council for Trade in Services regarding the ongoing GATS negotiations has, in its Horizontal commitments section – approval of projects by the FIPB as a national treatment and market access limitation. There is therefore an acknowledgement of the power of the Board in the country's commitments, which would require all foreign projects to obtain its approval before investing in the country.

Domestic Regulation

Article VI.4 of the GATS that pertains to Domestic Regulation states that any measure relating to qualification requirements, procedures, technical standards or licensing are not to constitute unnecessary barriers to trade in services. In the context of a service sector like tourism a statement with such a wide scope could be interpreted to include all relevant legislations and regulatory standards that apply to different aspects of tourism service provision in the country (construction, use of natural resources, access and activity inside protected areas, employment). International 'disciplines' pose a serious threat to democratic decision-making power of governments (national, state and local) and could question the relevance of several key regulatory measures that might have been put in place to fulfill environmental and social sustainability criteria.

Sustainable tourism development can be ensured only if governments put in place an effective domestic regulatory framework and implementing mechanism that monitors and mitigates the adverse socio-environmental impacts of tourism. Irrespective of the GATS or any other external influencing agency, the first step towards ensuring sustainability is a strong domestic regulatory framework. The domestic regulatory framework that is applicable for the tourism sector could be a combination of legal and voluntary initiatives. This section will focus

on legal instruments alone and analyse their importance and impact on effectively regulating tourism development in the country.

India being a federation where legislative powers are divided between state and central governments, the regulatory framework that influences tourism development would include national and state-level regulations. Every government – central or state has the constitutional mandate to pass (on issues that fall within its legislative purview) regulations / acts / notifications or other such instruments that would regulate development within its territory. Although efforts have been made by governments to pass legislations that safeguard the environment and local communities from unregulated tourism, their poor implementation has proved to be a severe dampener.

Regulatory Framework regarding the Environment –

There is a wide range of domestic regulations in force in India, which govern different aspects of the environment and thereby influence tourism development in different ways.

In 1972, the Parliament enacted the Wild Life (Protection) Act pursuant to the enabling resolutions of 11 states under Article 252(1) of the Constitution. The Wild Life (Protection) Act provides for state wildlife advisory boards, regulations for hunting wild animals and birds, establishment of sanctuaries and national parks, regulations for trade in wild animals, animal products and trophies, and judicially imposed penalties for violating the Act. However, the word tourism occurs just once in the Wild Life (Protection) Act 1972 in Section 28 and the permission to tourist entry rests totally with the Chief Wildlife Warden of the State. Tourism has come a long way since the time these laws were framed. The present forms of tourism practices are clearly detrimental to the well being of biodiversity in the protected

areas (PAs), as compared to what was practiced in the 70s. Therefore, there is an urgent need to make amendments in the clause or bring out an elaborate set of guidelines that define tourism and the way it should be conducted in and around PAs. Some of these important amendments include, addressing tourism as a separate activity, distinguished from 'research, scientific study and wildlife photography', to give PRIs also a right in granting permission for tourism activities and not only the Chief Wildlife Warden, regulate the annual number and most importantly, ensure that visitation statistics of all PAs in India are compiled, documented, consolidated and stored in appropriate retrieval forms, including digital forms, for easy access, at a single nodal agency like Wildlife Institute of India.

Similarly, the Forest (Conservation) Act 1980 was enacted by the Central Government to check the alarming rate of India's rapid deforestation and the resulting environmental degradation. As per the amendment in 1988, the Act lays down that the approval of the Central Government is required before a state "dereserves" a reserved forest, *uses forest land for non-forest purposes, assigns forest land to a private person or corporation*, or clears forest land for the purpose of reforestation. An Advisory Committee constituted under the Act advises the Centre on these approvals. While the Act is an extremely effective tool to monitor tourism development within forest areas, it might not appropriately address the issues of rights of forest dwellers and violation of these rights. The Act, therefore, although being effective in one dimension is too narrow its narrow scope.

The Coastal Regulation Zone Notification, 1991 (CRZ) defines and classifies zones and lays down a procedure for their protection. It states that '*...the Central Government hereby declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which*

are influenced by tidal action (in the landward side) upto 500 meters from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zones; and imposes with effect from the date of this Notification, the following restrictions on the setting up and expansion of industries, operations or processes, etc. in the said Coastal Regulation Zone (CRZ). Experience has however shown that it is quite easy for hotels and other tourism establishments to violate this regulation and scot-free. In Goa, The Goa Marriot Resort, one of Goa's five star deluxe hotels, got into legal problems as it was located in CRZ I²¹. However, as this was brought up at a stage when the construction of the hotel was complete and only its interior decoration was remaining, the High Court of Bombay at Panaji gave a judgement dismissing the case because the petitioners did not raise any objection and neither did any authorities at the time of granting the No Objection Certificates. The fact that the local regulatory authorities did not raise this issue when the hotel started construction activities, points to the influential position that the owners of the Marriott enjoy. Another luxury hotel in Goa, The Taj Fort Aguada Beach Resort has also violated the CRZ norms by constructing illegal extensions in the No Development Zone (NDZ). The Taj Village has manoeuvred around this legality by constructing a wall in the NDZ, termed by the hotel as "bio fencing". Both these instances only go to highlight the poor implementation of existing regulations, which would turn a good piece of legislation, worthless.

In addition to having internal inadequacies, these Acts are also sometimes mutually contradictory. For instance, Section 28 of the Wildlife (Protection) Act 1972 permits tourism in national parks and wildlife sanctuaries along with study and research with the discretion of the Chief Wildlife Warden. On the other hand the infrastructure that is

provided to the visitors as a consequence of the permit to tourism is in direct contradiction to and in violation of section 2 of the Forest (Conservation) Act, 1980 that prohibits any non-forest activity in forestlands.

The environmental impacts have also gone to highlight the lacunae that exist within current legislations that does not provide the space to address a lot of the concerns that tourism development raises. A brief look at the Ministry of Environment and Forests Environment Impact Assessment (EIA) Notification of 1994 shows that it is mandatory for tourism projects to conduct an EIA prior to being accorded permission to commence development. However the notification only applies to “all tourism projects between 200 to 500 metres of the high tide line and at locations with an elevation of more than 1000 metres above sea level with investment of more than INR 50 million.” This places a great many tourism projects outside the purview of the EIA notification, thus exempting them from any accountability that the notification might enforce. The bulk of the offshoot enterprises that develop are either not situated over 1000 metres above sea level, or are not big enough to have an outlay of INR 50 million.

Given this current nature of the regulatory framework for the environment in the country, activists and environmentalists have been lobbying with the government to effectuate certain urgent changes. India’s National Biodiversity Strategy Action Plan’s Sub-Thematic Paper on ‘Biodiversity and Tourism’ highlights some of these including filling up the gaps in existing legislations, directing state governments to formulate tourism guidelines that are site-specific and ensure that the Coastal Regulation Zone Act is strictly implemented and not diluted, as some lobbies are pushing for.

Regulatory Framework relating to the Social Impacts of Tourism

The task of setting up an effective regulatory system for rooting out social diseases like child labour, sexual exploitation of women and children, trafficking for sexual and non-sexual purposes, cultural degradation is all the more challenging in the context of tourism. In India, most of these concerns have been acknowledged in the Constitution itself and accordingly, legislative initiatives have been taken. But their implementation remains poor for a number of reasons. This section highlights these points using the illustrations of some of the adverse social impacts of tourism in India.

- **Child Prostitution, Sexual Exploitation:** The problem of child prostitution, sexual abuse and trafficking for sexual purposes is rampant in several major tourist destinations of the country but the legal mechanisms to address these sexual offences are limited. In the absence of a comprehensive set of laws pertaining to children’s rights, the only recourse that the legal system offers is the Juvenile Justice Act and certain sections of the Indian Penal Code (IPC) such as Section 377: “Unnatural Sexual Offences”. Apart from being inadequate, they fail to take into account the vast nature of child exploitation and the diverse levels at which abuse occurs. In some cases, there is also hesitation from government authorities to adopt stricter measures to monitor and curb these crimes. An example of this is the state of Goa, where to curb the growing instances of tourism-related paedophilia, activists have recommended publicising of offenders by Interpol and scanning of tourists on their arrival as part of the immigration process to deter paedophiles. Policy makers however have shown little interest fearing a backlash on the image of Goa as a tourist destination.

- **Child Labour:** As an area of concern child labour, was acknowledged from the time of independence and finds a mention in Article 24 of the Indian Constitution, which clearly states “No child below the age of fourteen years shall be employed to work in any factory or mine or employed in any hazardous employment”. Following this, in the past decade the government has undertaken several steps at the policy level to combat child labour. The Child Labour (Prohibition and Regulation) Act of 1986, prohibits employment of children below 14 years of age in certain types of hazardous jobs and regulates conditions of employment in others. A major lacuna however is that it applies only to formal industries, excluding informal occupations, thereby targeting only 6% of the total child labour force. This Act does not cover unorganized sectors, which form the main source of employment for the remaining 94 % of child labour force. Due to a narrow understanding of strategies for eliminating child labour, children are literally thrown out into the streets through rescue processes, making them more at risk of exploitation. Even in this case, there exist stark contrasts between the national and state policies, as child labour is a subject in the Concurrent List of the Constitution. While the National Child Labour Project (NCLP) targets only those children working in hazardous industries and industrial processes, the ‘Action Plan to Eliminate Child Labour in Karnataka’ (Refer Annexure I for Action Plan) “aims to eliminate child labour in toto, irrespective of the nature of employment.”
- **Women:** Similarly, although the legal provisions exist to address issues like discrimination against women at work and sexual abuse, it is strongly felt that the judicial system lacks the sensitivity required for issues

like these. In the case of offences such as rape, the timeliness of adjudication also plays an important role in determining its effectiveness. With tardy implementation of even the gravest criminal offences, it is impossible to expect the current regulatory framework to address issues like the GATS. The overriding powers of the GATS would nullify efforts being made by local communities and governments to strengthen the position of women in decision-making and enterprise-building in tourism.

Indicator 3: International Regulatory Framework

Concerted efforts have been made by various international agencies towards developing conventions, agreements and treaties that dwell on the concept of development that is sustainable and sensitive to the needs of the vulnerable sections of society. As tourism service provision cuts across sectors and has multidimensional impacts, it directly comes under the ambit of several such multilateral agreements. This section shall outline the essence of some of these significant international treaties and conventions that, although relating to specific sectors of protecting specific groups, all have a bearing on sustainable tourism development.

An understanding of the international regulatory framework that applies to the tourism context has two important advocacy advantages –

- International Conventions / Covenants / Treaties that have been signed or ratified by national governments reflect the government’s commitment to abide by and implement the provisions of the agreement within their countries
- Such international regulations, although may not be legally binding or mandatory on member governments, may be an important

precursor to developing an effective domestic regulatory framework that would be legally binding

Tourism – Specific Guidelines

Recognising the need for sustainable development of tourism, there are several international agencies that have developed principles and guidelines particularly addressing the travel and tourism sector. *The Global Code of Ethics for Tourism* developed by the World Tourism Organisation and the *Principles for Sustainable Tourism* adopted by the conference of parties participating at the VII Session of the Commission on Sustainable Development are two such examples. While these statements address tourism in its entirety, covering all its dimensions – economic, social, environmental, cultural and institutional; there are other important initiatives which address sustainability concerns within particular dimensions of tourism development.

- The Convention on Biological Diversity has developed guidelines on Biodiversity and Tourism Development titled *International Guidelines for Activities Related to Sustainable Tourism Development in Vulnerable Terrestrial, Marine and Coastal Ecosystems and Habitats of Major Importance for Biological Diversity and Protected Areas, Including Fragile Riparian and Mountain Ecosystems*. These guidelines (that were adopted by the seventh meeting of the Conference of Parties of the CBD held at Kuala Lumpur in February 2004) are the outcome of an international process that recognised the need to specifically address tourism as one of the important sectors in the context of sustainable development.
- The *International Cultural Tourism Charter* was developed by the International Council

on Monuments and Sites (ICOMOS) and formally adopted at its 12th General Assembly at Mexico in 1999. The Charter addresses the need for sustainable development of tourism at places of heritage significance by placing emphasis on respecting the culture and heritage of host communities. The Charter is now being placed before important international agencies (like UNESCO) and stakeholders (including national governments and the tourism industry) for endorsement.

- There are also initiatives that have been taken by Industry bodies and association, involved in the travel and tourism industry to promote sustainable tourism. In a statement issued jointly with the WTO-OMT, the IATA (International Air Transport Association)²² encouraged airlines, international travel organizations and airport authorities to multiply awareness building efforts in-flight magazines and video clips to prevent sex tourism. It also directed the tourism industry to adopt of self-regulatory measures such as code of conduct and good practices to complement legislation. The Pacific Asia Travel Association at its 50th Annual Conference at Kuala Lumpur in 2001 adopted and undertook to promote the Asia-Pacific Economic Cooperation APEC/PATA Code for Sustainable Tourism. The Code looks into the Environmental and Social aspects of tourism development and calls upon member economies to maintain environment management systems, foster environment-friendly practices and educate and inform others about the local environment and culture.

Related to Children

- a) ECPAT (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes) –

is an international network of groups and individuals that has special consultative status with the Economic and Social Council of the United Nations and works towards ensuring that children across the globe enjoy their fundamental rights by leading a life of liberty, free from sexual exploitation. The Code of Conduct is actually a full-fledged Programme run by ECPAT, funded by the UNICEF and supported by the WTO-OMT. The Code of Conduct developed by ECPAT pertaining to the travel and tourism industry directly addresses the threats and precautions that need to be taken to ensure that the industry does not contribute to the sexual exploitation of minors. By adopting the code, tourism service providers commit themselves to implementing the following –

- To establish an ethical policy regarding commercial sexual exploitation of children.
- To train the personnel in the country of origin and travel destinations.
- To introduce a clause in contracts with suppliers, stating a repudiation of commercial sexual exploitation of children.
- To provide information to travellers by means of catalogues, brochures, in-flight films, ticket-slips, home pages, etc.
- To provide information to local “key persons” at the destinations.
- To report annually

The Code of Conduct project is supervised by a Steering Committee whose membership includes the WTO-OMT, representatives of the tourism industry and tourism origin and destination countries. The Steering Committee also examines reports submitted by national governments on the status of implementation of the Code of Ethics.

- b) The World Tourism Organisation – In its

eleventh session, the General Assembly of the WTO adopted a resolution on *The Prevention of Organised Sex Tourism*. This resolution categorically rejects all activities related to organized sex tourism, in particular denouncing child sex tourism considering it a gross violation of the Article 34 of the Convention on the Rights of the Child and requiring strict legal action in this regard. AS a measure of enforcing and ensuring that these rights are respected, it calls upon countries engaged in tourism to enable and enforce legal and administrative measures to eradicate child sex tourism in particular through bilateral agreements to facilitate the prosecution of tourists engaged in such unlawful activities.

Relating to Labour Standards

The tourism industry, like many others, is often guilty of conducting work in violation of internationally accepted labour standards. Such work, more often than not, has particular impacts on vulnerable groups like children and women who are employed in varying capacities in the tourism industry.

The ILO (International Labour Organisation) Declaration of Fundamental Principles and Rights at Work states that – ‘...all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour;

(d) the elimination of discrimination in respect of employment and occupation.'

There are also specific ILO conventions that have been developed to encourage member governments to implement the above principles. The ILO, adopted on 17th June, 1999 at its 87th session, the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour in recognition of Convention on the Rights of the Child and the ILO Fundamental Principles and Rights at Work. The Convention directs ratifying countries to immediately take steps to prohibit and eliminate 'the worst forms of child labour' – which the Convention defines as –

- All forms of slavery, including sale and trafficking of children and forced or compulsory labour
- The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- Work, which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

In this regard, tourism has been recognised as one of the sectors, which perpetrates certain 'worst forms of child labour' especially those that jeopardise the moral safety of children. India was one of the first six countries to become a participating country in the ILO's International Programme on Elimination of Child Labour by signing a Memorandum of Understanding with the ILO although it is yet to ratify the Convention. Ratification of

the Convention binds the country under international law to give effects to its provisions in national law and practice.

The articulation and stating of these concerns by major players in the global tourism industry is an indicator of their acknowledgement of these grave issues that characterise tourism today. Governments and organizations around must take note of these statements and resolutions and internalize them in order to mitigate the adverse social impacts of tourism.

Multilateral Environmental Agreements

One of the strictest international regulatory frameworks that has developed pertains to regulations, standards and guidelines that address environmental problems that are global in nature – collectively referred to Multilateral Environmental Agreements (MEAs). There are over 200 MEAs in existence now, the membership of which varies from a small group to over 180 countries – which covers nearly the whole world. (Brach and Gray, '*Multilateral Environmental Agreements and the WTO*', International Institute for Sustainable Development, September 2003). The main MEAs in existence today fall into one of the following major categories –

- Those covering *biodiversity and wildlife*, including the 1946 International Convention for the Regulation of Whaling; the 1971 Ramsar Convention on Wetlands of International Importance; the 1973 Convention on International Trade in Endangered Species (CITES); the 1979 Bonn Convention on the Conservation of Migratory Species; the 1992 UN Convention on Biological Diversity and its protocol, the 2000 Cartagena Protocol on biosafety; and the 1994 International Tropical Timber Agreement.

- Those designed to protect the *atmosphere*, including the 1979 UN Economic Commission for Europe (UNECE) Convention on Long-Range Transboundary Air Pollution (together with five protocols on particular pollutants: nitrogen oxides, volatile organic compounds, sulphur, heavy metals and persistent organic pollutants); the 1985 Vienna Convention for the Protection of the Ozone Layer, and its protocol, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer; and the 1992 UN Framework Convention on Climate Change, and its protocol, the 1997 Kyoto Protocol (agreed but not yet in force).
- Those dealing with the *marine environment*, including the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter; the 1973 Convention for the Prevention of Pollution from Ships, and its protocol, the 1978 Marpol Protocol; and the 1982 UN Convention on the Law of the Sea, together with an implementing agreement, the 1995 Agreement on Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (agreed but not yet in force).
- Those regulating the *use of chemicals*, including the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the 2001 Stockholm Convention on Persistent Organic Pollutants (both agreed but not yet in force). The Montreal Protocol could be considered under this category, since it regulates the production and consumption of ozone-depleting chemicals.

- Those dealing with *waste*, including the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (see also under marine environment).
- *Others*, including the 1991 Espoo Convention on Environmental Impact Assessment, the 1992 UN Convention to Combat Desertification, and the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

These environmental regulations have pronounced relevance in the context of tourism development, which utilises and impacts the natural environment in varying degrees. In recent years, a serious debate has arisen regarding the possible trade impeding nature of such MEAs through the imposition of embargoes. There are three possible reasons as to why MEAs would incorporate trade restrictions –

- To monitor and control the trade in products where such trade would contribute to environmental damage
- To provide a means of complying with the MEAs
- To provide a means of enforcing the MEA by forbidding trade with non-complying parties

While it could be argued that provisions within these agreements do come in conflict with provisions of specific WTO instruments like the TRIPS or GATS, this is no reason to do away with them or even dilute their provisions. MEAs have come in response to growing global concerns regarding the environment and effort should be directed towards incorporating, rather than compromising their provisions with respect to the existing international trade regime.

HUMAN RIGHTS Conventions

Tourism often develops in a manner that violates human rights – both in general terms and the inherent rights of specific groups like those of women, children and indigenous people. Protection of Human Rights at the international level is sought through different International Conventions, Covenants and Charters that either deal with specific kinds of rights (Civil, Political, Economic, Social or Cultural) or are addressed to protecting the rights of specific groups like rights of women, children, indigenous people and so on. Many of these Conventions and Covenants are legally binding on signatories in as much as they clearly direct member governments to adopt measures (especially legislative) to ensure implementation of the Covenant. An understanding of these different Covenants and the specific commitments that individual governments have made under these, can be an important advocating instrument in the context of sustainable tourism.

The Universal Declaration on Human Rights is the most general and widely ratified of these International Conventions. Other important Covenants include –

- The International Covenant on Economic, Social and Cultural Rights (CESCR)
- The International Covenant on Civil and Political Rights (CCPR)
- The International Covenant on Elimination of All Forms of Racial Discrimination (CERD)
- The Convention on Elimination of All forms of Discrimination Against Women (CEDAW)
- The Convention on the Rights of the Child (CRC)
- The International Convention on Protection of the Rights of all Migrant Workers and Members of their Families (MWC)

Monitoring implementation of these Covenants is done through established Committees of

Experts known as ‘Treaty Bodies’ and created specifically for this purpose by the United Nations. For instance, implementation of CESCR is monitored by the Committee on Economic and Social Rights while CRC is monitored by the Committee on the Rights of the Child and so on. However some Committees do provide space for other stakeholders to contribute to the implementation process of specific Conventions. For example, the ECOSOC has granted Non Governmental Organisations (NGOs) with consultative status, allowing them to intervene at meetings of the Commission to express concerns and make suggestions to the Commission. This opportunity is however not extended to other Covenants like the CCPR which does not permit NGOs to intervene in addressing an international human rights violations by one national government against the other.

Commitments of individual member countries under each of these Covenants can range from being only signatories to actual ratification, accession and succession to the treaty. Depending on the degree of commitment made, countries will have to develop legal mechanisms nationally to implement the provisions of the specific international Covenant by the passing of a Bill, Act or Law to that effect. Member governments, in particular cases, would also be made to submit periodic reports to the respective treaty body to review the domestic implementation of the Covenant.

In addition to effecting domestic legal provisions, there is another point of significance of international covenants whereby interpretation of the covenant within the country, in a particular case could, if the Constitution permits it, form part of Precedent Law that will then have legal binding within the country. For instance, in India in the case of Vishakha vs State of Rajasthan

concerning sexual harassment at the workplace, the Supreme Court of India, used the guidelines of CEDAW to pass a judgment in favour of the complainant which then became Precedent Law in the country and made it mandatory for all working organizations (irrespective of type) to have Anti-Sexual Harassment Guidelines. This is an example of how, even in the absence of a specific legislation, by the Constitutionally given rights, the Apex Court has used international guidelines to create a regulatory framework in the country.

Indicator 4: International Institutions

Within the existing complex national structure within which tourism operates, there are important international bodies as well, which enter the scene as stakeholders in national, and regional tourism development. It is important to assess the role played by these agencies in promoting regional tourism to ensure that local conditions and needs and borne in mind when such interventions are being proposed.

The World Tourism Organisation (WTO-OMT) – is a specialised agency of the United Nations and the leading international agency in the field of tourism. It serves as a global forum for tourism policy issues and practical source of tourism know-how¹. The official website states - *'The WTO-OMT plays a catalytic role in promoting technology transfers and international cooperation, in stimulating and developing public-private sector partnerships and in encouraging the implementation of the Global Code of Ethics for Tourism.'* The WTO-OMT prioritises as one of its main tasks – the transfer of 'tourism know-how' to developing countries. In execution of this function it has brought in experts from all over the world to execute many large and small projects in member states involving preparation of Tourism Master Plans, developing national

parks, tourism legislation, statistics development, ecotourism plans, social impact assessments management of heritage sites and empowering women in tourism. Among some of the seminal areas of the organization's work in tourism includes²⁴ –

- Aiding members in expanding their tourism businesses through industry networking, forming contacts with the necessary government officials strengthening industry-education relationship, and conducting specialized research projects of the private sector through the World Tourism Organisation Business Council
- In the area of new Information Technologies (IT), to provide leadership in the field of IT and tourism, as well as helping to bridge the digital divide between the have and have-nots among WTO's membership.
- Working to add value to the tourism sector of WTO Member States improving their capacity building and providing direct support in tourism education, training and knowledge. Through the WTO human Resources Development Department
- In the area of tourism and trade, the aim is to relate tourism policies and strategies to multilateral negotiations according to the General Agreement on Trade in Services (GATS) designed to achieve progressively higher levels of liberalization with a view to promoting economic growth and the development of developing countries by working closely with the World Trade Organisation and UNCTAD.
- WTO also sets international standards for tourism measurement and reporting. and provides the world's most comprehensive tourism statistics

With such a wide scope and important areas of intervention, the activities proposed by the WTO for tourism development in the country or the proposals put forth by national governments to the WTO must be closely monitored. This is all the more important given its liaison with the World Trade Organisation towards liberalizing trade in tourism services.

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) –

has had an important role to play in global tourism through different themes, one such being the concept of World Heritage. The overarching objective of seeking to encourage, identify, protect and preserve cultural and natural heritage around the world is enshrined in the Convention concerning the Protection of World Cultural and Natural Heritage, adopted by UNESCO in 1972. Identification of such sites by national governments and their acceptance into the World List by the UNESCO converts them into 'World Heritage Sites', a title - which in itself comes to form the basis of the destination's tourism promotion campaign. In addition to formulating the World Heritage List, UNESCO's mission includes providing assistance (technical and professional) to State Parties in safeguarding World Heritage Property even in times of emergencies and supporting public awareness building activities for preserving World Heritage. This places UNESCO directly in the realm of management of tourism destinations that are on the WH List making it another stakeholder in the institutional structure.

At such destinations, the objectives of World Heritage preservation and local developmental activity in the region might turn conflicting, giving rise to a definite clash of interests. This is clearly illustrated in the case of Hampi (situated in the state of Karnataka), a small town of great historical and archaeological importance, which became part of World

Heritage in 1986. The 'Ruins of Hampi' have been a star attraction on the state's tourism map and its title as being a World Heritage Site has been a contributing factor to attracting more tourists. Situated on the banks of the river Tungabhadra, Hampi is located between the two towns of Hospet and Anegondi, which are the focal points of commercial and residential activity for people of the region. Commuting between these towns involves navigating across the river, a task which is always difficult but can turn fatal during the monsoon season when the river is in full flow. To resolve this problem, the state government in 1999, sanctioned the construction of two bridges across the river, which would ease travel for the local people. This move has been strongly criticised and opposed by UNESCO, which foresees great danger to the monuments in the Hampi area as a result of the bridges. This is because the opening of the bridges would dramatically increase the traffic flow between Hospet and Anegondi, which, as they would be plying through parts of the Hampi heritage site, would put the monuments at grave risk. Resultantly, UNESCO shifted Hampi from being on the World Heritage List to the World Heritage in Danger List, and has given strict directions to the state government to halt all work on the bridges and consider alternatives to solve the problem. The construction of the bridges has remained incomplete.

Which side to take in such situations of conflict can be debated upon, but these nonetheless come as a cautionary signal to national governments as to the complications that could arise when there are multiple stakeholders and complex institutional frameworks within which tourism functions.

United Nations Development Project (UNDP)- is recently supporting the Ministry of Tourism, Government of India in a project to promote rural

tourism initiatives through experimentation and exploration. The project, which is titled the 'Endogenous Tourism Project for Rural Livelihoods', is being rooted through the already existing Rural Tourism Scheme launched by the Government of India, which focuses on developing India's villages by promoting tourism and developing economic growth models. According to the project statement *'These new alternative models will be community owned and driven and will be structured on India's cultural heritage and indigenous tradition. It will help strengthen national identity and combine the arts and crafts dimensions of rural life. It will aim at preserving the environment and not destroy it. At every stage in the implementation of the project, care will be taken to ensure the participation of women, youth and other disadvantaged groups.'*²⁵ A total of 31 sites have been short-listed so far – 18 for the UNDP Endogenous Tourism Project and 13 for the Government of India's Rural Tourism Scheme. The objectives and proposed activities as part of the project include -

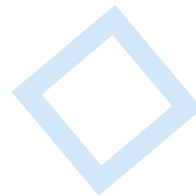
- Build capacity at the local level through establishment of a half dozen tourism circuits involving some 20 communities at specific sites, where an alternative model of endogenous, community-based sustainable tourism, involving both domestic and international tourists, would be set up on a pilot basis, and then tested and evaluated
- Experiment with location-specific models of community tourism enterprise, engaging in the gamut of activities from construction to operation and marketing, starting with core funds from the project, thereby expanding visitor stay duration and hence, tourism revenue
- Build strong community-private partnerships in the tourism sector through an enabling environment for the dynamic participation of local communities/artisans, local / State authorities, NGO's and private entrepreneurs in setting up and sustaining efforts in this area
- Support innovative and promising rural

tourism initiatives through establishment of an Incentive Fund to encourage experimentation, replication and dissemination of experiences and practice; and. compilation of a Register of Innovations

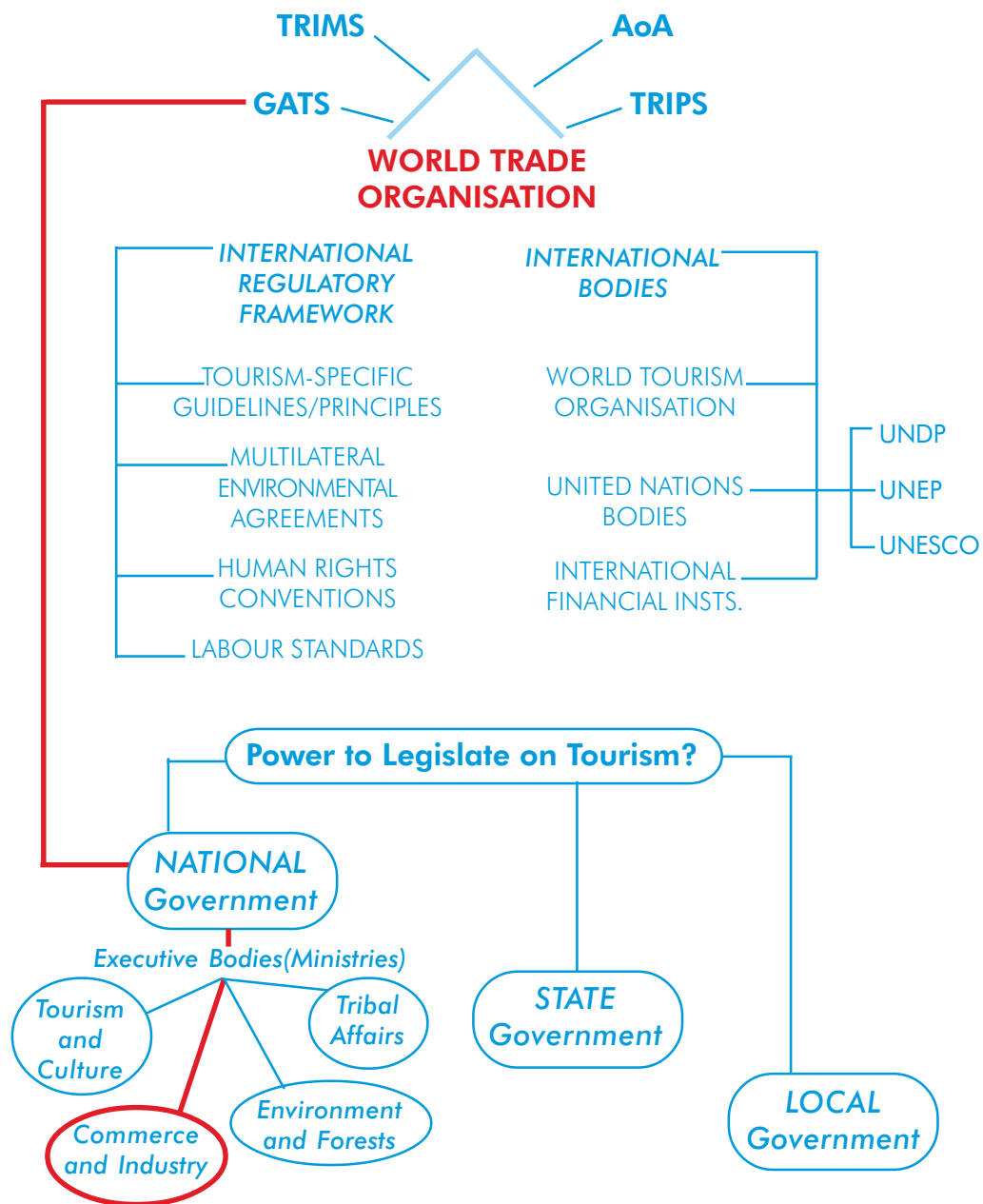
- Provide inputs to national and state tourism policy, based on a detailed evaluation of the feasibility and sustainability of extending this system nationwide

The UNDP has therefore emerged as an additional institution in the framework within which tourism operates in the country. Its objectives make it clear that the project is not merely site-specific and has envisioned broader impacts on national and state tourism management structures.

International Financial Institutions – Development Banks like the World Bank Group, the International Monetary Fund (IMF), Asian Development Bank, African Development Bank, within their mandate to give sector specific loans to national governments, have financially aided tourism projects – directly and indirectly. There is a serious need to scrutinise the projects which are being proposed and funded by these Banks as their past records have shown that often project implementation has raised serious social and environmental concerns that are not accounted for. The World Bank and the IMF, have in the past, pursued a vigorous tourism promotion strategy in Africa, especially during the 1970s and 1980s; although lending to the sector has dramatically reduced in recent years. Nonetheless the Banks have focused on other critical sectors like infrastructure, water and forestry, all of which are directly linked to the tourism sector. Concerns over IFI lending include their undemocratic process of project approval and implementation, the non-transparency in their functioning, non-disclosure of vital project-related information to the public and refusal to subject projects to public assessment and poor implementation of projects. Thus, IFIs have come to play a strategic role in all sectors of the economy and must be acknowledged as an important component of the institutional framework within which national / regional tourism operates.



Flowchart depicting the Institutional Framework for Tourism



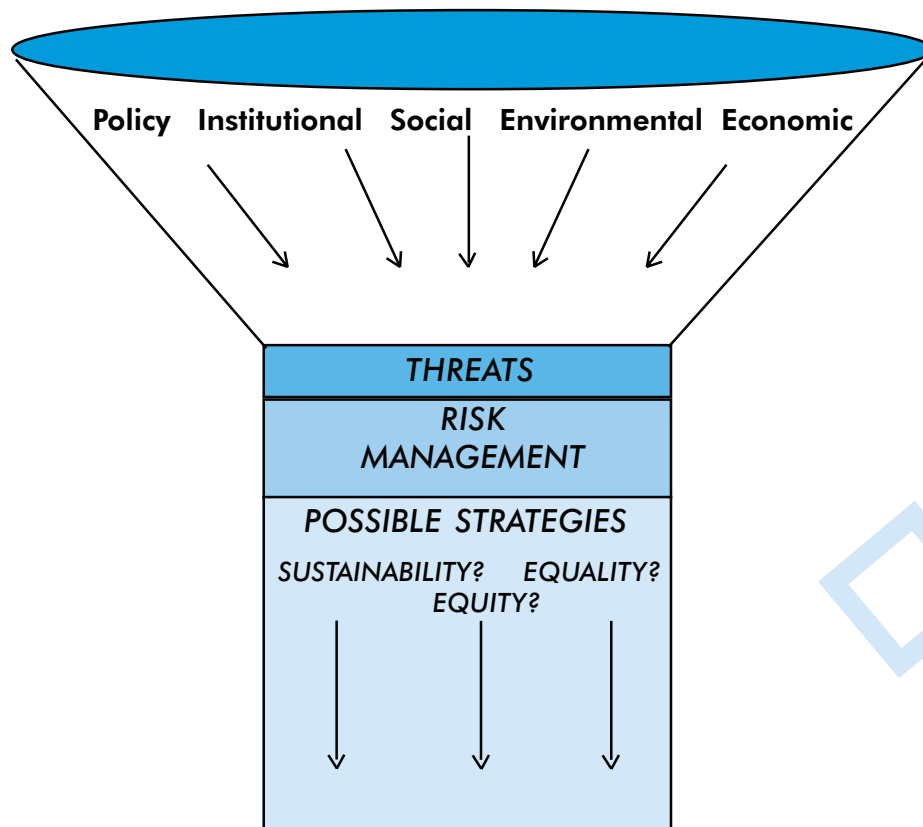
GATS[□] RECOMMENDATIONS[□]

Tourism is an activity that cuts across sectors and has the capacity to impact all aspects of individual and collective life. Development of this sector in a sustainable manner so that it fulfills the objectives of economic upliftment, environmental preservation and cultural enhancement, requires a combination of statutory and voluntary initiatives by governments, communities and the industry. The World Tourism Organisation, Commission on Sustainable Development and Convention on Biological Diversity are but few of the many international institutions that have recognised this need and accordingly developed principles

that guide stakeholders on how to ensure the sustainability of tourism. In this complex web, the onset of the GATS as an instrument that strives to bring down barriers impeding trade in tourism must be critically analysed to ensure that the liberalisation process does not jeopardise sustainability needs of economies and communities dependent on tourism.

How could the methodology of this document help?

The following flowchart is an indicator of the steps that countries could follow to do a country-specific analysis of the impacts of the GATS, using this template.



This Flowchart highlights four important steps that countries could follow to go a country-specific or region-specific analysis of the impacts of the GATS on sustainable tourism.

Step 1: Use the template and the indicators listed therein to collect information on the impacts of tourism along the five axes of the framework – Economic, Environmental, Social, Policy and Institutional. (as indicated by the mouth of the funnel)

Step 2: Use this information collected to clearly identify the threats for the sustainability of tourism in the country.

Step 3: Juxtapose these threats with the country's sector-specific GATS commitments on tourism to analyse how the risk is going to be managed (the legally binding commitments made by countries must be understood as a risk that has to be managed as countries may have little chance of going back on these commitments).

Step 4: On the basis of the threats identified and the GATS risk that will have to be managed, delineate clear strategies, developed through a democratic, consultative process, which will ensure sustainability and equity in tourism.

How could the content of this document help?

Develop a Holistic Understanding of Tourism

There is no universally acceptable, all-encompassing definition of sustainable tourism precisely because sustainability criteria and sustainability needs differ across countries. But the one common thread that runs through its different interpretations is that tourism has to be viewed and understood holistically and not through the narrow lens of economic gain and trading opportunity alone. This is one of the major reasons for the apparent discrepancy between international institutions that view

sustainable tourism as a development strategy and the WTO that treats it as just another 'service' that can be traded on the global market to bring profits. Governments must acknowledge the role that tourism plays in the economic, environmental, social and cultural lives of its people and accordingly develop policies that are based on such a comprehensive understanding of the sector. At the same time, it would be impossible to achieve sustainability in tourism without effective cooperation from private institutions involved in tourism development.

Overcome the Research Deficit

Attempts to analyse how the GATS will impinge on sustainable tourism concerns in any country have to be preceded by a thorough understanding of the nature, form and impacts of tourism development domestically. The case studies of the previous chapter have highlighted that both the nature of tourism development, and its impacts, vastly differ from region to region and country to country. Therefore to arrive at a national or regional negotiating position on the GATS based on a generalised understanding of tourism impacts would be a fundamental error. In many cases, the inability of national governments to address the multitude of impacts that tourism has, in their GATS commitments, is the result of an incomplete understanding of the sector itself. Undertaking primary research and consulting with all stakeholders on the state of tourism development within a region is a prerequisite to arriving at informed positions on how a country must negotiate under the GATS.

Strengthen Institutional Capacity to cope with Liberalisation of the Sector

To say that the institutional mechanism within which the tourism sector operates is complex would be an understatement. These complexities and the resultant confusion and lack of coordination are a serious handicap to countries

that attempt to develop tourism responsibly. In such a situation, opening up the sector to foreign investment can bring more harm than good as the mechanisms of control and regulation will be absent at worst or poorly enforced at best. Developing countries in particular, must direct efforts towards strengthening their domestic institutional framework before proceeding any further in the GATS negotiations if they are to gain meaningfully from it.

Make tourism development a Democratic and Participatory Process

There is an urgent need to make tourism development a bottom-up process that emerges from the needs and priorities of local communities and develops with their consent and participation as against the top-down nature currently prevalent in most countries. Wherever tourism is being proposed, communities have the right to be informed and involved in all processes concerning its development including policy-formulation and project implementation. Proper, periodic consultation with local communities and governments can help avoid, or if unavoidable, mitigate many of the adverse socio-cultural and environmental impacts of tourism. One of the major criticisms of the current structure of negotiations within the WTO is that it does not provide local governments any legitimate space to rightfully participate in the process of developing international trading agreements. As GATS rules and commitments are negotiated only by national governments but apply to local governments as well, there is a need to clarify the role of such subsidiary governments in the international trading regime.

Analyse the Impacts of other Instruments of Liberalisation

The GATS is but one of many modes currently being pursued by governments to negotiate multilateral trade. Regional Trade Agreements

have emerged as a powerful instrument used by developed and developing countries to further their economic and political interests. Countries, which are hesitant to make binding commitments under the GATS, whose Most-Favored Nation clause extends privileges granted to one trading partner to all other trading partners, opt to enter into bilateral or regional agreements that might be more beneficial and less extensive in their scope. This trend is emerging strongly among developing countries, which not only enter into agreements between themselves in South-South harmony, but also are rigorously pursuing agreements covering all sectors, including services with the developed world. But to consider Regional Trade Agreements an easier and benign route towards trade liberalisation will be naïveté as neither are they disconnected from the multilateral trading process nor are their impacts on local sustainability any less worrisome. The NAFTA (North American Free Trade Area) and its resultant impact on Mexican economy and society is a significant case in point. As with the negotiations taking place at the WTO, negotiations towards forging regional trade alliances are also conducted behind closed doors and are equally non-consultative in their process. It is also becoming increasingly clear that regional trade agreements are motivated by political rather than well-thought through economic reasons which raises further questions regarding their viability. For instance, the Indo-Thai FTA (Free Trade Agreement) was signed by the Indian Prime Minister two weeks after his entry into office in spite of concerns regarding its unfeasibility being voiced by quasi-government research body National Council for Applied Economic Research (NCAER). In the final analysis of factors impacting sustainable tourism, there is a need to broaden the focus beyond the GATS and address the growing importance of Regional Trade Agreements as well.

EXPLANATORY NOTE ON THE GATS²⁶

The General Agreement on Trade in Services (GATS) came into being in Marrakesh, Morocco on April 15, 1994 and was put into force on January 1, 1995. It is one of the many sub-agreements that are administered by the World Trade Organization (WTO); its aim is to establish a set of global trading rules for service industries. The GATS has been referred to by the WTO as "perhaps the most important single development in the multilateral trading system since the GATT itself came into effect in 1948 (WTO 1999a)." Pushed in the 1980s by developed countries and their corporate lobbies, it is an agreement in which developing countries have played a marginal and defensive role. Like other agreements of the WTO, all members (as of May 2002, 148 countries were full fledged members) are signatories to this agreement. The GATS is legally enforceable and is aimed at deregulating international markets in services, including public services like education, health, water distribution, energy, communications and sanitation; its aim is to help ensure that trading ensues and that more economies grow by giving service companies and providers more rights to entry. The World Tourism Organization (WTO-OMT) states the rationale behind the GATS as follows:

In order to do business as effectively as possible, companies need level playing fields so that they can have equal access to natural resources, expertise, technologies and investment, both within countries and across borders (WTO-OMT 1995, 1).

The agreement aims at a progressive phasing out of government barriers to international competition in the services sector. The Scope and Definition of GATS is given in Article 1 of the Agreement:

This Agreement applies to measures by Members (i.e. national government signatories to the Agreement) affecting trade in services [...] for the purposes of this Agreement, measures by members means measures taken by central, regional or local government authorities.

The basic mechanism of the GATS is based on commitments that member states have made regarding each service sector. That is, each country states what it is willing to reform and to what extent, sector by sector; these, by definition, are the commitments. There are 160 separate sector classifications in 12 broad groupings that nations are to give commitments on; by construction, the agreement is very comprehensive (GATT 1991). The commitments themselves detail the "trading rules" of each sector. Das (1998, 107-8) provides a succinct description of the commitment process:

A member will negotiate with other Members about the sectors in which it wants to give commitments. The commitments agreed upon will be included in the schedule of the Member. A Member is bound to give treatment to services and service suppliers in accordance with the commitments it has undertaken which are inscribed in its schedule of specific commitments [...] A member can prescribe terms, limitations and conditions [...] in respect of the services mentioned in its schedule [...] If a Member has not mentioned a particular sector in its schedule of specific commitments, it will be presumed that it has undertaken no obligation in respect of that sector; and thus it will be free to take any measure regarding market access and national treatment in those sectors, subject, of course, to the general obligations. However, if a Member has mentioned a sector in its schedule and has not inscribed limitations, qualifications, etc., it will be presumed to have



accepted full market access commitment and national treatment commitment in that sector.

By signing up to GATS, governments are committed to engaging in new negotiation processes with the aim of achieving “a progressively higher level of liberalisation” in their service sectors. In February 2000, new negotiations began in Geneva, and the process has recently been accelerated after

the WTO Doha ministerial meeting in November 2001. Member states began submitting requests to other Members on June 30, 2002; March 31, 2003 is the initial date to respond to these requests with offers. The commitments made in each sector are made in four “modes of supply”. These modes of supply delineate how the sector is to be reformed concerning those commitments within member states.

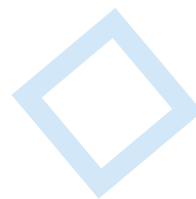
MODES OF SUPPLY

- **Mode 1: Cross Border Supply** – where the service is provided remotely from one country to another (i.e. international telephone calls, telemedicine, internet bookings)
- **Mode 2: Consumption Abroad** – where individuals use a service in another country (i.e. tourist travelling abroad, patients taking advantage of cheap healthcare in other countries)
- **Mode 3: Commercial Presence** – where a foreign country sets up a subsidiary or branch within another country in order to deliver the service locally (i.e. foreign direct investment in banks, hotels and hospitals)
- **Mode 4 – Presence of Natural Persons** – where individuals travel to another country to supply the service there temporarily (i.e. software programmers, nurse, doctors). This is different from immigration as the GATS explicitly deals only with temporary movement

There are three levels of commitments: none, with limitations, or unbound. The first level implies that the country has placed no limits on other member states. The second states what the limitations are. Finally, unbound implies that no commitment is made or is possible, for a variety of reasons (i.e. insufficient data or irrelevance). While commitments are generally applied to specific sectors, a nation can also make commitments that apply to all sectors. These limitations are known as horizontal commitments.

Although GATS does not force any country

to commit a sector, each country that does commit can request sectors from other countries in exchange for offering their own. The overall agreement by all countries to continuous liberalisation through negotiation will mean that pressure is exerted to commit sectors and reduce imitations. Along with the concept of service sectors and the four modes of supply, there are three other key concepts outlined in the text of the agreement itself that determine what rights the companies of member states have relating to their movement among other member states.



GATS KEY CONCEPTS

- **Most Favoured Nation (MFN) Treatment (Article II):** Each member shall accord services and service providers of any other Member treatment no less favourable than it accords to like services and service suppliers of any other country. That is, a government must not discriminate between services and service suppliers of other countries.
- **Market Access (Article XVI):** GATS requires members not to put restrictions on the ability of foreign investors to enter the market if they have made bound commitments in the respective sector.
- **National Treatment (Article XVII):** Under the National Treatment obligation, WTO members commit themselves to treat foreign investors 'no less favourably' than domestic investors. This obligation applies to any measure, which may have intended or unintended effect of discriminating against a foreign investor.

The initial requests filed by developed countries in pursuance with current GATS negotiations concentrated mostly around commercial presence in respect of financial, energy, environmental, transport and professional services²⁷. Countries are however allowed to relax their obligations including the most favoured nation (MFN). Other extenuating circumstances that are allowed as exceptions to the commitments arise in the case of measures to secure public morals, and to protect human, plant, and animal life. Balance of payments difficulties may also justify temporary restrictions on an MFN basis, which may contravene commitments²⁸. Whether the GATS detracts from governments fulfilling obligations to human rights as well as those categorized as economic, social and cultural rights will depend on how these exemption conditions are interpreted by the WTO panels and tribunals. Given GATT jurisprudence the exceptions will be interpreted narrowly, so it is highly unlikely that panels would ever interpret them to include more than what they specifically state.

The World Tourism Organization (WTO-OMT) in its explanatory publication on GATS states

that the agreement recognizes "[...] that different countries are at different stages in their development and services regulations. It provides special treatment for developing countries, particularly the least developed ones, with a view to increasing their participation in world trade" (WTO-OMT 1995). Precisely how this differential treatment is to be implemented within the architecture of the GATS is not clear. Developing countries themselves have not been very coherent in proposals submitted to the CTS, on using these articles to their advantage and several trade lawyers have highlighted that the provisions of Article IV, Article XIX and the right to regulate mentioned in the preamble are likely to be causalities if they come in conflict with the treaty's more substantial provisions.

In the context of Tourism related negotiations it is also important to dwell on the cluster approach of commitments. There have been two kinds of cluster proposals in the GATS so far. The first proposed by the north, mainly the EU, (as mentioned earlier the US and Australia are also in favour of this approach) is plainly a method to force through deeper liberalisation as opposed to the positive list- request offer approach, which gives considerable flexibility to developing countries. This proposal aims to

identify economic interlinkages between sectors and sub sectors and liberalise these as part of a single cluster. India has been one of the more vocal opponents of such an approach.

On the other hand the proposal for an annex for tourism called the T-5 or the Andean proposal (proposed by the Dominican Republic, El Salvador, Honduras, Nicaragua and Panama) takes a different approach to clustering. This proposal uses the UN Central Products Classification and the World Tourism Organizations Standard International Classification of Tourism Activities (SICTA) to arrive at a comprehensive list of services closely linked to tourism. The proposal aims to prevent the anti-competitive practices of tourism providers from the north, which often spill over into sectors outside the present tourism classification (e.g transportation and travel information networks)²⁹. It views tourism as a development issue and aims to introduce the concept of sustainability into the tourism trade. It takes note of the disturbing fact that there has been no monitoring of the impacts of progressive liberalisation on developing countries, and Mode four relating to the supply of services, which deals with the presence of natural persons, has been virtually ignored.

The annex also mentions that in spite of the presence of safeguards in the agreement the anti competitive behaviour of foreign tourism providers continues. The proposed transfer of technology is yet to materialise and the

proposal rightly highlights the increased incidence of vertical and horizontal integration of tourism providers in developed countries, which is likely to see a huge drop in the market independence of local players. The importance of the access to and use of information systems like the GDS and CRS according to transparent, reasonable and objective criteria is taken note of. The World Tourism Organisation (WTO-OMT), which has been disappointed at the restricted GATS understanding of the worlds largest industry, has also been an active supporter of the annex proposal. While at face value the annex proposal may seem like a positive development the danger of it being hijacked both by the WTO-OMT and the developed countries is real. In fact, some developed countries have welcomed the tourism annex proposal while developing countries, especially India, have been sceptical about the need for an annex on tourism. This could be because, other than the annex on natural persons, most annexes have led to deeper liberalisation without addressing concerns of developing countries.

Both cluster approaches have been in limbo, maybe due to the fact that the guidelines and procedures for the negotiations on trade in services adopted by the special session of the Council for Trade in Services (CTS) on March 28, 2001 mentions that the main method of negotiations shall be the request offer approach. However, this open-ended statement leaves the option for countries to choose the cluster approach to make offers.

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¹ The complete title of the guidelines is – *International Guidelines for Activities related to Sustainable Tourism Development in Vulnerable Terrestrial, Marine and Coastal Ecosystems and Habitats of Major Importance for Biological Diversity and Protected Areas, Including Fragile Riparian and Mountain Ecosystems*

² WTO-OMT's World Tourism Barometer Statistics indicates that Europe continues to dominate the world tourism market with a market share of 54.8%, out of which Western Europe alone accounts for 20%. In regions of the world largely consisting of developing countries, the figures of share in the global market is as follows: South Asia 1.1%, Caribbean 3.5%, Central America 0.7%, South America 2.0% and Africa 2.7%.

³ It is important to note that although the analysis is largely based on the vertical commitments made in tourism, a comprehensive understanding of a country's horizontal commitments is of equal importance. References have been made to countries' horizontal commitments in the GATS, where deemed appropriate.

⁴ The Tourism Satellite Account is a new statistical instrument designed to measure the impacts of tourism goods and services on national economies using an international standard endorsed by the UN Statistical Commission. The TSA provides data on the following economic variables - tourism's contribution to the Gross Domestic Product, tourism ranking compared to other economic sectors, the number of jobs created by tourism in an economy, amount of tourism investment, tax revenues generated by tourism industries, tourism consumption, tourism's impact on a nation's balance of payments and characteristics of tourist's human resources. The TSA concept was developed by the United Nations and is being implemented across countries by the World Travel and Tourism Council.

⁵ Fiji's TPR states that - *Whilst the Government is committed to its trade liberalization policy measures, it has now reached a stage where it needs to carefully monitor the pace of import liberalization, in order to find the balance where Fiji reduces protection only to the point to which it continues to spur local efficiency, productivity, and competitiveness without sacrificing large parts of local business. With this in mind, the Government will adopt a gradual approach to further liberalization in future, whilst it takes a broader look at its deregulation policy, with the view to reducing existing high cost structure of business.*

⁶ An export leakage arises when overseas investors who finance the resorts and hotels take their profits back to their country of origin whereas an import leakage results when tourism activity has to supply to tourists commodities, goods and services that are not locally available and therefore need to be imported, causing a drain of revenue.

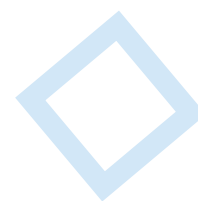
⁷ The Act defines a restricted activity as one which has special conditions placed on a foreign investor carrying on a business in this activity.

⁸ As of December 2002, Qantas' share in Air Pacific- Fiji's national airline was 46.32% and Air New Zealand's was 1.97%. As per the Cooperation Agreement between the 3 airlines, Air New Zealand, Qantas and Air Pacific have agreed to cooperate in aspects including pricing and scheduling of their services, business and operations they consider appropriate.

⁹ These three locations alone receive 2,87,471 out of the 3,48,014 annual visitors to Fiji (WWF, 2003)

¹⁰ Clause 5 of Article 9 of the WTO Code of Ethics states - *As an irreplaceable factor of solidarity in the development and dynamic growth of international exchanges, multinational enterprises of the tourism industry should not exploit the dominant positions they sometimes occupy; they should avoid becoming the vehicles of cultural and social models artificially imposed on the host communities; in exchange for their freedom to invest and trade which should be fully recognized, they should involve themselves in local development, avoiding, by the excessive repatriation of their profits or their induced imports, a reduction of their contribution to the economies in which they are established*

¹¹ A report the Caribbean Regional Negotiating Machinery titled 'Tourism Services Negotiation Issues : Implications for CARIFORUM countries' reads that *cruise ship services should be re-classified under the GATS as a "tourism and travel related service", given the increasing importance of cruise ships to Caribbean*



tourism economies and the impact of their activities on land-based tourism subsectors (e.g. hotels, tours, attractions, entertainment etc). Cruise ships compete directly with the land-based hotel and accommodation sub-sector. They also control access to the tourist for many services and goods suppliers in CARIFORUM states (e.g. tour guides, entertainer arts and crafts salesmen, retail outlets etc.) either by selling goods and services onboard, or by directing passengers to preferred retail outlets or service providers onshore. While there are diverging views on the benefits of cruise tourism to CARIFORUM destinations, it is evident that cruise tourism is a key element of the Caribbean tourism economy. The re-classification of cruise ships will be easier to achieve at the WTO if cruise ships are included within a regional definition of tourism.

¹² For instance, Kenya's Interim PRSP for 2000-2003, as part of its focus on tourism, has stated that the government is committed to substantially reducing all regulatory and licensing requirements that 'constrain, control and impose costs on business without adding value'; that the Kenya Tourism Department and The Kenya Tourism Board shall be subject to private sector oversight and that the private sector shall be a consultant and participant in the country's global trade negotiations on tourism.

¹³ For instance, the leopard that usually hunts by the day has taken to hunting by night due to the continuous movement of tourist vehicles

¹⁴ Countries that are heavily indebted to the Bank are categorised as HIPC countries for which the Bank Group runs an exclusive programme that includes providing debt relief from time to time.

¹⁵ A recent US court case involving a cruise ship demonstrates the anomalous situation of cruise ships within the world trading system. In March 1998, during a criminal trial in Miami concerning the falsification of records and the intentional bypassing of pollution control equipment, Royal Caribbean Cruises Ltd argued that the US lacked jurisdiction in the case because the *Sovereign of the Seas* was flagged in Liberia. Royal Caribbean attorneys produced a diplomatic note from the Liberian Embassy in the US asserting that Liberia had primary jurisdiction. The US court rejected Liberia's claim on that occasion.

¹⁶ The Federal Constitution of Brazil stipulates the maximum number of working hours to be 44 in a week.

¹⁷ 'Sustaining India's Services Revolution : Access to Foreign Markets, Domestic Reform and International Negotiations', The World Bank 2004.

¹⁸ The word *Panchayat* originally signifies Council of five (*panch*) Village Elders

¹⁹ Official website of the Ministry of Tourism and Culture, Government of India www.tourismofindia.org

²⁰ The regulation has been explained in detail in the section on Domestic Regulation

²¹ The Act classifies CRZ I as areas that are ecologically sensitive and important. These include national parks, marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, areas close to the breeding and spawning ground of fish and other marine life, areas of outstanding natural beauty, areas rich in genetic diversity and other such as may be declared by the Central government or the concerned authorities at the state/union territory level. No new construction will be permissible within 500 metres of the HTL (High Tide Line) and none at all is allowed between the low tide line and the HTL.

²² 'The Protection of Children from Sexual Exploitation in Travel and Tourism', Presented at Yokohama on 17 December 2001

²³ Quoted from the WTO-OMT website – www.world-tourism.org

²⁴ <http://www.world-tourism.org/aboutwto/eng/menu.html>

²⁵ www.undp.org.in/ccf2_prodoc/livelihood/ET_Update_September2004.pdf

²⁶ This explanatory note on the scope of the GATS has been taken from the EQUATIONS' 2002 study 'Weighing the GATS on a Developing Scale : the case of Tourism in Goa, India'

²⁷ See "India opposes EU move to Redefine 'market access' Norms", Business Standard, August 21, 2002.

²⁸ See "What Does The GATS Mean....For India", Economic Times, September 1, 2002.

²⁹ For a detailed overview of services related to tourism, see Granzin-Jorg and Jesupatham (1999, 30).

